

Pat Orsaia**one-on-one meeting between Cathy and myself.****Q.** I don't want you to speculate.

Do you recall actually meeting with

Ms. Magone to the best of your --

A. To the best of my recall, we communicated by telephone.**Q.** Prior to what you term as the final meeting with Ms. Newmark, on how many occasions from September 28th - the day in which you met with both Ms. Newmark and Ms. Magone - and that final meeting, did you communicate with Ms. Magone?**A.** I can't say for sure how many times.**Q.** Can you approximate the number?**A.** Approximately two, possibly three.**Q.** Are you including, as a source of communication, the e-mail you forwarded to Ms. Magone, or something else?**A.** No, I was not including that e-mail.**Q.** So, the two to three communications concerned Ms. Newmark's termination; is that right?**A.** Yes.**Q.** How long after that meeting did you

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have the first communication with Ms. Magone?

A. I don't recall the exact date.**Q.** What do you recall Ms. Magone saying, in words or substance?**A.** I recall going through the detail involving the -- involving Ms. Newmark's attendance. I recall Cathy providing me with the exact dates of Ms. Newmark's unplanned absences, which were not inclusive of the time off that had been approved for the colonoscopy. And I recall speaking with Cathy Magone specifically about the performance concerns.**Q.** What do you recall her saying about the performance concerns to you?**A.** She told me that she had counseled Carole about -- let me back up for a second. She told me that they had been at -- I believe what they call the length-of-stay meeting that involved Carole and other social work -- members of the social work and case management department. This was, I think, a regular meeting. I'm not sure if it was daily. My sense is that it was. And that at that meeting, Cathy came away concerned because, as was the practice at

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Pat Orsaia**those meetings, she would ask people about specific cases and progress on specific patient cases. And that when she asked Carole specifically about her cases, that Carole had not responded in a way that Cathy thought indicated that Carole was familiar with her cases or had made the appropriate progress on them.****I believe Cathy said she -- Cathy happened to have a list of all the patient cases with her. And when she first asked Carole, Carole could not even provide her with the name of one patient that she was working with. And Cathy produced the list to Carole and reminded her who the cases were.****And Cathy was very concerned that Carole didn't have at her fingertips the names of the patients whose cases she was actively working on at that point. And in Cathy's estimation, that was unusual and indicated that Carole was not on top of her responsibilities.****Q.** When did this meeting take place?

MR. KEIL: Which meeting?

MS. NICAJ: Length-of-stay

meeting.

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Pat Orsaia**A.** Cathy told me it had happened earlier in Carole's tenure.**Q.** Okay.**A.** Sometime over the summer, I think.**Q.** Do you recall whether she asked Ms. Magone why she didn't know -- withdrawn.

Did Ms. Magone state whether she had asked Ms. Newmark why she didn't know the status of these cases?

A. She didn't state that she had asked Carole directly, in front of that group, why she didn't know the status of the case.**Q.** I'm not asking that.

I'm asking, did Ms. Magone state that she had asked Ms. Newmark why she didn't know the status of those cases, whether it was in that meeting or sometime after?

A. I'm sorry. Why Cathy Magone didn't --**Q.** Why Ms. Newmark didn't know the status of the cases.**A.** She did not. Ms. Magone did not state that.**Q.** Did you inquire as to whether

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1 Ms. Magone had asked?

2 **A. No, I did not inquire.**

3 **Q. Apart from this issue concerning a**

4 **length-of-stay meeting, which was attended by**

5 **Ms. Magone and Ms. Newmark, did Ms. Magone say**

6 **anything else with reference to performance?**

7 **A. Yes. She told me that there had**

8 **been concerns brought by case managers, who were**

9 **part of the same team as Ms. Newmark, regarding**

10 **Ms. Newmark's handling of particular patient**

11 **circumstances. One involved a patient leaving**

12 **the hospital without the appropriate clothing.**

13 **And there were concerns about -- concerns stated**

14 **by other members of the team directly to Cathy,**

15 **regarding Ms. Newmark's lack of appropriate**

16 **responsiveness.**

17 **Q. Do you know how many cases**

18 **Ms. Newmark was responsible for?**

19 **A. The only information I have about**

20 **the number of cases she was responsible for, was**

21 **I believe -- as I recall, when Ms. Magone was**

22 **talking to me about her concern -- about her**

23 **concern about the discussion at the length-of-**

24 **stay meeting, I recall that Cathy Magone used the**

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1 **number, four cases, when she said to me that --**

2 **and I believe she said it in the regard of, you**

3 **know, Ms. Newmark only has four cases, or**

4 **something like that, which, to Ms. Magone,**

5 **emphasized the fact that she ought to know who**

6 **those people are. Ms. Newmark should have known**

7 **who those people are and be actively engaged and**

8 **be able to give details as to the progress of**

9 **those patients.**

10 **MS. NICAJ: Move to strike**

11 **the nonresponsive --**

12 **MR. KEIL: Object to the**

13 **motion.**

14 **Q. How many cases, to your knowledge,**

15 **did Ms. Newmark have at the time you and**

16 **Ms. Magone discussed termination after September**

17 **28th?**

18 **MR. KEIL: Just to clarify,**

19 **what was the plaintiff's caseload during**

20 **that period.**

21 **MS. NICAJ: Yes, absolutely.**

22 **A. I would have no way of knowing that.**

23 **Q. Apart from the case -- the number of**

24 **cases that are assigned, what is your knowledge**

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1 **with respect to what other responsibilities**

2 **Ms. Newmark had in her position as social worker?**

3 **A. I have a general understanding of**

4 **what the job is of a social worker at Lawrence**

5 **Hospital Center. I do not have the specifics of**

6 **caseload or what their length-of-stay**

7 **requirements are or -- that is really the**

8 **leader's responsibility to monitor.**

9 **Q. What is your general knowledge as to**

10 **what the duties and responsibilities of a social**

11 **worker is at Lawrence Hospital?**

12 **A. My general knowledge of the duties**

13 **of the social worker is to -- is as an integral**

14 **part of the case management and social work team,**

15 **is to, in a timely fashion, see to the needs of**

16 **the patient, including participating in the**

17 **discharge plan and providing resource and**

18 **referral information to the patients and their**

19 **families for care, resources available outside of**

20 **Lawrence and inside of Lawrence, and basically,**

21 **have the patient set up for appropriate discharge**

22 **plan and care post-discharge.**

23 **Q. Did you ever see any written**

24 **guidelines as to what the responsibilities of the**

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1 **social worker were at Lawrence?**

2 **A. In my tenure at Lawrence, I had**

3 **occasion to review many of the job descriptions.**

4 **It's entirely possible that I had read the job**

5 **description of the social worker. I may have**

6 **also seen the job posting for whenever we had a**

7 **vacancy of social worker, which would have given**

8 **some information about the role and**

9 **responsibilities.**

10 **Q. Going back to your first**

11 **communication with Ms. Magone, concerning --**

12 **after September 28th, concerning Ms. Newmark,**

13 **what, if anything else, did Ms. Magone relate to**

14 **you with respect to Ms. Newmark?**

15 **A. Ms. Magone pointed out to me that at**

16 **that time, she had become aware that Ms. Newmark**

17 **had failed to bring her up to speed regarding**

18 **some communication from -- I believe it was from**

19 **an RN, who was also assigned to the mental-health**

20 **project that Ms. Newmark was responsible for.**

21 **Ms. Magone expressed that as a concern, because**

22 **she had been prompting Ms. Newmark to say, what**

23 **progress have you made on this project, and was**

24 **disappointed that there was no progress that**

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2 **Ms. Newmark could refer to.**

3 **Q.** What was the project?

4 **A.** The mental-health project that

5 **Ms. Newmark was assigned to.**

6 **Q.** Do you know when she was assigned to

7 that project? Did Ms. Magone tell you?

8 **A.** I don't know the exact date. I

9 believe there was a training that Ms. Newmark and

10 one of the registered nurses attended. I don't

11 know the exact date of it.

12 **Q.** Did you seek to ascertain when that

13 training was held?

14 **A.** I recall asking Ms. Magone if enough

15 time had elapsed from the time that Ms. Newmark

16 was assigned to the mental-health project, to the

17 time we were speaking, that she would have

18 expected some progress to be documented.

19 And she said, yes, it had been -- I

20 don't recall exactly what she said, but it had

21 been at least several weeks.

22 **Q.** What does "enough time" mean? What

23 do you mean by "enough time"?

24 **MR. KEIL:** Objection as to

25 form. Rephrase.

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2 time," basically, I was trying to ascertain if it

3 was a reasonable assumption on Ms. Magone's part

4 that there would have been some progress on the

5 project by Ms. Newmark at that point.

6 And she told me that she felt it was

7 reasonable; that she had been assigned to the

8 project for several weeks with no progress to

9 date.

10 **Q.** What was the project? What did that

11 entail, to your knowledge?

12 **A.** I can't tell you exactly.

13 **Q.** Did you ask about that, what the

14 project about?

15 **A.** I knew that it was on the topic of

16 mental health, just like I knew the palliative-

17 care project was on the topic of palliative care.

18 **Q.** Did you seek to determine what

19 exactly the project encompassed?

20 **A.** No. That would have been her

21 leader's responsibility to determine.

22 **MS. NICAJ:** I'll move to

23 strike as nonresponsive.

24 **Q.** Did you ask Ms. Magone what that

25 project encompassed, apart from knowing it was

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2 **Q.** You recalled asking her if there was

3 enough time? She recalled you asking her if

4 there was enough time; right?

5 **A.** To your earlier question, I didn't

6 ask her the date of Ms. Newmark's assignment to

7 the mental-health project. But when Cathy Magone

8 told me she continued to be very concerned that

9 there was no progress on Ms. Newmark's part to

10 date with the project -- and then Cathy had

11 brought it up again because something had

12 happened much closer to my conversation with

13 Cathy Magone, where Cathy was telling me that she

14 had found out -- not from Ms. Newmark, but from

15 some other source -- that there had been some

16 communication between, my understanding is,

17 another nurse who had attended the initial

18 training, was assigned to the project with

19 Ms. Newmark, there had been some communication,

20 and Ms. Newmark had not made Ms. Magone aware of

21 that.

22 And my comment to her was -- it was

23 my way of asking, well, how long has she been

24 assigned to this project.

25 Basically, when I said "enough

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2 about mental health?

3 **A.** No.

4 **Q.** Any other concerns that Ms. Magone

5 raised to you?

6 **A.** Ms. Magone said that she felt that

7 Carole had not adjusted -- or maybe wasn't suited

8 to the case-management model that was used at

9 Lawrence Hospital Center, that we had a

10 discussion about Carole's having come from a very

11 different work environment. Just prior to working

12 at Lawrence, she had been, I believe, in an

13 outpatient behavioral-health or mental-health

14 setting. And Cathy and I talked about the

15 differences between the daily work

16 responsibilities in that setting, versus an

17 inpatient, acute-care setting, as it relates to

18 the goals of the department length-of-stay

19 requirements, the insurance consideration for

20 someone's discharge plan, et cetera.

21 We talked about some business

22 criteria for success in the role of social work.

23 And Cathy told me that she really did not feel

24 that Carole had demonstrated that she was either

25 willing to, or capable of being successful, given

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1 **Pat Orsala**
 01:10:57PM 2 **our model of work.**
 01:10:58PM 3 **Q.** Did you seek to ascertain what
 01:11:00PM 4 Ms. Newmark's employment performance was prior,
 01:11:02PM 5 in her prior employment at Lawrence?
 01:11:03PM 6 **A.** Did I, personally?
 01:11:05PM 7 **Q.** Yes.
 01:11:06PM 8 **A.** No.
 01:11:08PM 9 **Q.** Is it fair to say that if
 01:11:10PM 10 Ms. Newmark's employment performance in the
 01:11:12PM 11 earlier employment wasn't satisfactory, she would
 01:11:14PM 12 not have been rehired at Lawrence? Is that fair
 01:11:16PM 13 to say?
 01:11:18PM 14 **A.** I don't know what her role was in
 01:11:20PM 15 her previous performance.
 01:11:22PM 16 **Q.** Are you saying that there are
 01:11:24PM 17 instances where unsatisfactory employees are
 01:11:26PM 18 rehired at Lawrence?
 01:11:28PM 19 **MR. KEIL:** I object as to
 01:11:30PM 20 form.
 01:11:32PM 21 Answer, if you can.
 01:11:34PM 22 **A.** I'm going to have to ask you to
 01:11:36PM 23 rephrase the question.
 01:11:38PM 24 **Q.** Are you saying, in the case where an
 01:11:40PM 25 employee's performance was not satisfactory and
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1 **Pat Orsala**
 01:12:37PM 2 that employee left the hospital, that employee
 01:12:39PM 3 could later be rehired?
 01:12:41PM 4 **A.** In a different capacity, yes. There
 01:12:43PM 5 are instances where that happens.
 01:12:45PM 6 **Q.** Has that happened at Lawrence?
 01:12:47PM 7 **A.** I can't recall a particular case,
 01:12:49PM 8 but when we looked -- at Lawrence when we look at
 01:12:51PM 9 someone's eligibility for rehire, which is, I
 01:12:53PM 10 think, what we're talking about here, we would
 01:12:55PM 11 look not only at their performance in the
 01:12:57PM 12 previous role, but we would look at, you know, if
 01:12:59PM 13 it was the same role they were coming in --
 01:13:01PM 14 sometimes people are not the right fit in one
 01:13:03PM 15 job, and they are the right fit in another job.
 01:13:05PM 16 Sometimes people leave for a time; they get more
 01:13:07PM 17 education; they get a different certification.
 01:13:09PM 18 They come back with different credentials than
 01:13:11PM 19 they had the first time.
 01:13:13PM 20 **Q.** To your knowledge, Ms. Newmark
 01:13:15PM 21 voluntarily left her employment at Lawrence when
 01:13:17PM 22 she was previously employed there the first time;
 01:13:19PM 23 isn't that right?
 01:13:21PM 24 **A.** To the best of my knowledge, yes.
 01:13:23PM 25 **Q.** Therefore, she was eligible to be
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1 **Pat Orsala**
 01:13:25PM 2 rehired at Lawrence; isn't that right?
 01:13:27PM 3 **A.** Yes.
 01:13:29PM 4 **Q.** Had she been terminated for any
 01:13:31PM 5 reason, she would not have been eligible to be
 01:13:33PM 6 rehired; is that right?
 01:13:35PM 7 **A.** That is not necessarily correct, no.
 01:13:37PM 8 **Q.** Why isn't that necessarily correct?
 01:13:39PM 9 **A.** Well, there could be a situation
 01:13:41PM 10 where someone is hired into a particular position
 01:13:43PM 11 and perhaps during the probationary period
 01:13:45PM 12 resigns, or is told that it is not a good fit by
 01:13:47PM 13 the organization and leaves, and then sometime
 01:13:49PM 14 later, comes back and applies for a job, as I
 01:13:51PM 15 said, having gotten different credentials, a
 01:13:53PM 16 different job, a different situation. It's
 01:13:55PM 17 possible the person could be rehired.
 01:13:57PM 18 **Q.** Has that happened in Lawrence?
 01:13:59PM 19 **A.** I can't say for certain if it has
 01:14:01PM 20 happened or not happened. I'm speaking more
 01:14:03PM 21 toward the philosophy of what the rehire practice
 01:14:05PM 22 would be.
 01:14:07PM 23 **Q.** Going back to your communication
 01:14:09PM 24 with Ms. Magone after the first time following
 01:14:11PM 25 this first meeting on September 28th, with
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1 **Pat Orsala**
 01:15:37PM 2 Ms. Newmark and Ms. Magone, what else, if
 01:15:39PM 3 anything, did she say concerning Ms. Newmark?
 01:15:41PM 4 **A.** Ms. Magone told me that she was
 01:15:43PM 5 preparing the performance-evaluation
 01:15:45PM 6 documentation that would be delivered to
 01:15:47PM 7 Ms. Newmark during the separation discussion.
 01:15:49PM 8 **Q.** Anything else that was said by her
 01:15:51PM 9 that you can recall?
 01:15:53PM 10 **A.** Not that I recall at this time.
 01:15:55PM 11 **Q.** What, if anything, as you sit here
 01:15:57PM 12 today -- you said "at this time."
 01:15:59PM 13 Are there any documents you can use
 01:16:01PM 14 to refresh your recollection?
 01:16:03PM 15 **A.** No.
 01:16:05PM 16 **Q.** Did you reduce anything that
 01:16:07PM 17 Ms. Magone told you during this time, in writing?
 01:16:09PM 18 **A.** No.
 01:16:11PM 19 **Q.** What, if anything, did you say to
 01:16:13PM 20 Ms. Magone?
 01:16:15PM 21 **A.** As I have already stated, we talked
 01:16:17PM 22 about the details of the performance concerns.
 01:16:19PM 23 **Q.** What did you say? Not what you both
 01:16:21PM 24 said. What did you say, specifically, in words
 01:16:23PM 25 or substance?
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A. I asked her to provide me with the specific dates for the attendance, the unplanned absences. And she did.

I asked her to tell me about the performance concerns. And she did.

I asked some clarifying questions during our discussion of the performance concerns.

I stated to Cathy that, as Ms. Newmark was in her probationary period, as per our policy, either Ms. Newmark or Lawrence Hospital Center could decide to separate employment.

I asked Cathy, what would be a convenient time to schedule Ms. Newmark's separation discussion. I asked her about Ms. Newmark's work schedule for that day, as we thought it would be best to, if possible, schedule the separation discussion toward the end of her shift.

I asked Ms. Magone if she had had any response from Ms. Newmark, to Ms. Magone's e-mail to Ms. Newmark, which, again, addressed Ms. Magone's intent and use of the word "young."

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That's all I recall.

Q. Why did ask you her if there was a response?

A. Ms. Magone had copied me on the e-mail she sent to Ms. Newmark, offering her clarification, and I was curious to know if or how Carole had responded to the e-mail.

Q. Why?

A. Because it was an ongoing dialogue that had happened. And again, you know, at this point, I'm still trying to facilitate a resolution of this employee's concern with her manager.

Q. At that time, you knew she was being fired, though; right?

A. Right.

Q. So, what do you mean by facilitate a concern that she had with her manager when she was being fired?

A. What do you mean, what do I mean by it? Exactly what I said. It's still -- In my role as HR manager, I'm hoping they will be able to reconcile that point.

Q. Even though she is being fired,

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reconcile the point?

A. The fact that she was being separated from employment, had nothing to do with the alleged comment, using the word "young."

Q. And that is based on what Cathy Magone told you; isn't that right - that it had nothing to do with that?

A. It's based on the documentation in the specific detail that the manager gave me regarding her reasons for separating employment.

Q. Who is the manager again?

A. Cathy Magone.

Q. And who did Ms. Newmark complain about?

A. She complained about an alleged comment from Cathy Magone.

Q. So, you're saying, with respect to Magone, these are not allegations; but with respect to Ms. Newmark's alleged comment --

A. I'm not sure what you mean.

Q. When you characterize what Ms. Magone tells you, it's a statement of fact. When you characterize what Ms. Newmark related to you what Ms. Magone told her, you use the word

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"alleged."

Why is there a difference?

A. The information that was provided to me by Cathy Magone as to the rationale behind Ms. Newmark not successfully completing her probation, was documented information. That is why I asked Ms. Magone for the dates of unplanned absence, which she took right off her time sheets and showed me, and the information about the complaint about Ms. Newmark's performance, the lack of progress on the project, et cetera.

Q. What was documented? What did you see that was documented?

A. Ms. Magone had notes of the complaints from the other case managers that she shared with me.

Q. She had notes?

A. Yes.

Q. Did you see any documents or complaints from those case managers?

A. Yes. I believe there were one or two, at least, that were actually maybe e-mails to Cathy Magone, expressing concern over Ms. Newmark's lack of responsiveness.

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01:24:00PM 2 Q. Well, did anyone seek to inquire of
01:24:13PM 3 Ms. Newmark's position on those points?
01:24:26PM 4 A. You would have to ask Ms. Magone
01:24:39PM 5 that.
01:24:52PM 6 Q. I'm asking, did you?
01:25:05PM 7 A. Not that I know of.
01:25:18PM 8 Q. Did you ask Ms. Magone whether she
01:25:31PM 9 did?
01:25:44PM 10 A. I asked Ms. Magone if she had
01:25:57PM 11 followed up with Carole after receiving the
01:26:10PM 12 various complaints from case managers and others.
01:26:23PM 13 And she said, yes.
01:26:36PM 14 Q. She did say, yes?
01:26:49PM 15 A. Yes.
01:27:02PM 16 Q. Did you communicate with Ms. Magone
01:27:15PM 17 at any other time, apart from what you have
01:27:28PM 18 testified to, concerning Ms. Newmark?
01:27:41PM 19 A. On the date of the separation
01:27:54PM 20 discussion, I believe I contacted Cathy to be
01:28:07PM 21 sure that Carole was actually at work that day
01:28:20PM 22 and our meeting was still planned for the same
01:28:33PM 23 time.
01:28:46PM 24 Q. Do you know who communicated with
01:28:59PM 25 Ms. Newmark about the meeting? Was it you, or
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01:29:00PM 2 Ms. Magone, or someone else?
01:29:13PM 3 A. It was not me.
01:29:26PM 4 Q. Where did the meeting take place?
01:29:39PM 5 A. In my office.
01:29:52PM 6 Q. What time?
01:30:05PM 7 A. I don't recall.
01:30:18PM 8 Q. Who was present there?
01:30:31PM 9 A. Cathy Magone, and Carole Newmark,
01:30:44PM 10 and myself.
01:30:57PM 11 Q. Who spoke during this meeting first?
01:31:10PM 12 A. To the best of my recall, I spoke
01:31:23PM 13 first.
01:31:36PM 14 Q. What did you say, in words or
01:31:49PM 15 substance?
01:32:02PM 16 A. I stated to Carole that we were
01:32:15PM 17 meeting because Cathy had ongoing concerns about
01:32:28PM 18 her attendance and performance, and then I turned
01:32:41PM 19 the conversation over to Ms. Magone, who provided
01:32:54PM 20 the details.
01:33:07PM 21 Q. What did she, Ms. Magone, say, in
01:33:20PM 22 words or substance?
01:33:33PM 23 A. She had the prepared probationary
01:33:46PM 24 performance-evaluation document with her, which
01:33:59PM 25 had already been completed and signed by
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01:34:00PM 2 Ms. Magone. She went through it, although
01:34:13PM 3 briefly, with Ms. Newmark.
01:34:26PM 4 Cathy advised Ms. Newmark that she
01:34:39PM 5 had not successfully completed her probation and
01:34:52PM 6 that we were separating employment.
01:35:05PM 7 And to the best of my recall at that
01:35:18PM 8 point, Carole was not interested in going through
01:35:31PM 9 the document or, you know, reading through it, or
01:35:44PM 10 taking the time to do that.
01:35:57PM 11 It was my sense that Carole wanted
01:36:10PM 12 the meeting to end as quickly as possible after
01:36:23PM 13 she knew that it was a separation discussion.
01:36:36PM 14 Q. What, if anything, did Ms. Newmark
01:36:49PM 15 say?
01:37:02PM 16 A. I don't recall her saying very much.
01:37:15PM 17 I recall that she understood where the
01:37:28PM 18 conversation was going. I believe she said, "I
01:37:41PM 19 understand I'm being separated from employment."
01:37:54PM 20 I offered her at that point the
01:38:07PM 21 option of submitting a letter of resignation.
01:38:20PM 22 And I told Ms. Newmark that we were going to
01:38:33PM 23 separate employment, but she did have a choice
01:38:46PM 24 about whether it would officially be on the
01:38:59PM 25 record as a termination of employment or
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01:39:00PM 2 resignation.
01:39:13PM 3 I pointed out to her that, should
01:39:26PM 4 she decide to resign, that Lawrence Hospital
01:39:39PM 5 Center would not stand in the way of any claim
01:39:52PM 6 for unemployment insurance that she might put
01:40:05PM 7 forth and that would otherwise be determined by
01:40:18PM 8 the Department of Labor as being a legitimate
01:40:31PM 9 claim.
01:40:44PM 10 And I told her that in terms of any
01:40:57PM 11 prospective employment, that, as was our
01:41:10PM 12 practice, we'll only share dates of employment
01:41:23PM 13 and job title.
01:41:36PM 14 And I offered her the opportunity to
01:41:49PM 15 decide whether she wanted it to be a resignation
01:42:02PM 16 as opposed to a termination. I offered her the
01:42:15PM 17 opportunity to make that determination -- take
01:42:28PM 18 overnight to make that determination.
01:42:41PM 19 And we agreed that she would contact
01:42:54PM 20 me the next day with her decision.
01:43:07PM 21 Q. Was there anything else discussed at
01:43:20PM 22 the meeting, apart from what you have already
01:43:33PM 23 testified to?
01:43:46PM 24 A. Yes. I advised Ms. Newmark that,
01:43:59PM 25 when our meeting concluded, that Cathy would
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1 accompany her back to her work station so she
2 could collect her personal belongings; that if
3 she had anything that needed to be packed up -
4 for instance, books, you know, personal items, et
5 cetera, that she could not take with her right
6 then - that they would be happy to pack them up
7 and send to her or arrange for her to come back
8 and get it at another time.

10 I had Ms. Newmark's letter of
11 termination prepared in advance of the meeting.
12 I had it with me. And as I recall, I told her I
13 had the letter of termination, but she had this
14 option. And when I had her decision, then,
15 should she decide to resign, that she would be --
16 she would need to submit a letter of resignation
17 to me, and I would destroy the letter of
18 termination; or if she -- if her decision was to
19 have this be a termination, I would send the
20 letter of termination to her.

21 Q. Was there anything else said by
22 anyone at the meeting, apart from what you have
23 already testified to?

24 A. Not that I recall.

25 Q. Did there come a time, you --

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1 withdrawn.
2

3 Following the meeting, what happened
4 in connection with Ms. Newmark?

5 A. Following the meeting, at some
6 point -- at some point after Ms. Newmark left
7 Lawrence Hospital premises, I spoke with Cathy
8 Magone. She relayed to me that Carole's final
9 comments to her had been very inappropriate and
10 involved profanity. She told -- Cathy Magone
11 told me specifically what had happened.

12 And I suggested to her that she note
13 that in an e-mail and send it to me.

14 Q. Why?

15 A. Because I thought it was important
16 that that be documented.

17 Q. Why?

18 A. Because it was completely
19 inappropriate.

20 Q. She was fired; she had been
21 terminated; is that right - Ms. Newmark?

22 A. Well, at that point, she was told
23 she was separating employment. It was up to her
24 whether it was a termination or resignation.

25 Q. Well, no, it wasn't. She was going

COMPU-TRAN SHORTHAND REPORTING

Pat Orsaia

1 to be terminated; right? Her resignation would
2 have been involuntary; isn't that right? She had
3 no choice but to either quit or be fired?

4 A. She was leaving our employment;
5 that's correct.

6 Q. She had no other choice; right? It
7 was one option or the other - forced resignation
8 or termination? She didn't have the decision to
9 remain at Lawrence; isn't that right?

10 A. No, she did not.

11 Q. So, she had been fired at this
12 point; is that right?

13 A. That is not the terminology I would
14 use. She had been told that we were separating
15 employment, effective immediately.

16 Q. And she had been told this by
17 Ms. Magone; is that right?

18 A. In my presence, yes.

19 Q. The person that she made these
20 allegations concerning; isn't that right?

21 A. "These allegations;" could you
22 clarify?

23 Q. Sure. Allegations concerning
24 ageism.

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1 A. Yes. Ms. Newmark made an allegation
2 that Ms. Magone used the word "young," and she
3 considered that to be ageism.

4 Q. That is the only allegation she
5 made?

6 A. Yes.

7 Q. So, when you saw the e-mail that you
8 referenced, when you read the e-mail from her
9 relating to the statements that Ms. Magone said
10 to her, in reference to "young," and "could take
11 things in like a sponge" and "Nicole was younger,
12 and she could handle the job better than she
13 could" -- she didn't make those allegations to
14 you?

15 A. May I see that document, please?

16 Q. Of course.

17 MR. KEIL: Would you like me
18 to show Ms. Orsaia my copy of Plaintiff's
19 Exhibit 5?

20 MS. NICAJ: Thank you.

21 A. Would you like me to look at that
22 one instead?

23 Q. It doesn't matter. I'm going to
24 direct your attention to the fact that

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01:20:41PM 2 Ms. Newmark didn't merely allege that Ms. Magone
01:20:43PM 3 used the word "young." She, in fact, alleged
01:20:45PM 4 that Ms. Magone said Nicole was younger and could
01:20:47PM 5 handle the job better than she could; isn't that
01:20:49PM 6 right?
01:20:51PM 7 **A. Could you rephrase the question,**
01:20:53PM 8 **please?**
01:20:55PM 9 **Q.** She, in fact, told you that Nicole
01:20:57PM 10 was younger and could handle the job better than
01:20:59PM 11 she could; isn't that right?
01:21:01PM 12 **A. Who told me this? What are you**
01:21:03PM 13 **asking?**
01:21:05PM 14 **Q.** Ms. Newmark --
01:21:07PM 15 **A. I'm sorry. I'm going to have to ask**
01:21:09PM 16 **you to rephrase. I'm not sure if you're reading**
01:21:11PM 17 **from number three -- and I'm trying to respond to**
01:21:13PM 18 **what you're reading -- or you're asking a**
01:21:15PM 19 **separate question.**
01:21:17PM 20 **Q.** Didn't Ms. Newmark advise you, in
01:21:19PM 21 words or substance, that Ms. Magone told her that
01:21:21PM 22 the reason Nicole was being appointed to that
01:21:23PM 23 palliative-care unit was because Nicole was
01:21:25PM 24 younger and could handle the job better than
01:21:27PM 25 Ms. Newmark could?

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Pat Orsaia

01:22:06PM 2 **A. Ms. Newmark's -- Ms. Newmark stated,**
01:22:08PM 3 **her allegation to me, that Ms. Magone had used**
01:22:10PM 4 **the word "young" when explaining to her why**
01:22:12PM 5 **Nicole was assigned to the palliative-care**
01:22:14PM 6 **project.**
01:22:16PM 7 **Q.** I'm going to direct your attention
01:22:18PM 8 to what is marked as Plaintiff's Exhibit 5.
01:22:20PM 9 Here, I'm going to show you the formal exhibit.
01:22:22PM 10 *(Handing)*
01:22:24PM 11 Do you see paragraph three?
01:22:26PM 12 **A. I do.**
01:22:28PM 13 **Q.** She made that allegation in your
01:22:30PM 14 presence, didn't she, that "Nicole was younger
01:22:32PM 15 and could handle the job better than I could," in
01:22:34PM 16 reference to Ms. Newmark; is that right?
01:22:36PM 17 **MR. KEIL:** I'm going to
01:22:38PM 18 object. Your question seems to be
01:22:40PM 19 ambiguous. Are you asking the witness --
01:22:42PM 20 **MS. NICAJ:** I'm going to
01:22:44PM 21 rephrase the question.
01:22:46PM 22 Please don't make a speaking
01:22:48PM 23 objection, okay?
01:22:50PM 24 **Q.** Did Ms. Newmark state to you at any
01:22:52PM 25 time, that Ms. Magone told her Nicole was younger

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Pat Orsaia

01:20:22PM 2 and could handle the job better than she could,
01:20:24PM 3 in words or substance?
01:20:26PM 4 **A. That is not a direct quote that I**
01:20:28PM 5 **recall hearing from Ms. Newmark.**
01:20:30PM 6 **Q.** Well, did she ever write that to
01:20:32PM 7 you, for example, like Plaintiff's Exhibit 5?
01:20:34PM 8 **MR. KEIL:** Object. The
01:20:36PM 9 document speaks for itself.
01:20:38PM 10 You may answer if you can.
01:20:40PM 11 **A. Plaintiff's 5, number three says,**
01:20:42PM 12 **when we went over the issue --**
01:20:44PM 13 **Q.** I'm asking you a question.
01:20:46PM 14 **A. You're asking me what the document**
01:20:48PM 15 **says. I'm reading it back.**
01:20:50PM 16 **Q.** Did she; yes or no?
01:20:52PM 17 **A. Please rephrase. Did who, what?**
01:20:54PM 18 **Q.** Did Ms. Newmark ever advise you,
01:20:56PM 19 whether it's in writing, or verbally, or in
01:20:58PM 20 person, or in any manner, that Ms. Magone told
01:21:00PM 21 her, "Nicole was younger and could handle the job
01:21:02PM 22 better than I could"?
01:21:04PM 23 **A. Not in those exact words, she did**
01:21:06PM 24 **not.**
01:21:08PM 25 **Q.** In writing?

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Pat Orsaia

01:20:46PM 2 **A. What Ms. Newmark says in this**
01:20:48PM 3 **document --**
01:20:50PM 4 **Q.** I'm asking --
01:20:52PM 5 **A. -- that Cathy denied that she said**
01:20:54PM 6 **that, quote, "Nicole was younger and could handle**
01:20:56PM 7 **the job better than I could."**
01:20:58PM 8 **Q.** Did she ever advise you, yes or no,
01:21:00PM 9 that Ms. Magone told her that Nicole was young
01:21:02PM 10 and could handle -- was younger and could handle
01:21:04PM 11 the job better than she could?
01:21:06PM 12 **A. No.**
01:21:08PM 13 **Q.** She never did. Okay.
01:21:10PM 14 Did Ms. Magone ever, at the
01:21:12PM 15 September 29th, meeting, ever state, in words or
01:21:14PM 16 substance, Nicole was young and could take things
01:21:16PM 17 in like a sponge?
01:21:18PM 18 **MR. KEIL:** I object as to
01:21:20PM 19 form.
01:21:22PM 20 Answer if you can.
01:21:24PM 21 **A. I do not recall that as a direct**
01:21:26PM 22 **quote from Cathy Magone.**
01:21:28PM 23 **Q.** You see how there is a quote that
01:21:30PM 24 Ms. Newmark wrote? She stated that she did say
01:21:32PM 25 that Nicole was quote, "young and could take

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Pat Orsaia

1 things in like a sponge." Do you see that?

2 **A. Yes, I do.**

3 **Q. Do you dispute that's what**

4 **Ms. Magone said at the September 28th meeting?**

5 **A. I do.**

6 **Q. You do dispute that?**

7 **A. Yes.**

8 **Q. Did you submit your dispute or --**

9 **withdrawn.**

10 **Did you reply to Ms. Newmark,**

11 **disputing her recollection of what Ms. Magone**

12 **said at the meeting?**

13 **A. No.**

14 **Q. Have there been claims of**

15 **discrimination brought against Lawrence Hospital**

16 **by other employees?**

17 **MR. KEIL: Over what period**

18 **of time?**

19 **MS. NICAJ: Since her**

20 **employment, to the time she ceased**

21 **employment.**

22 **A. For the almost five years that I was**

23 **employed at Lawrence Hospital?**

24 **Q. Yes.**

25

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Pat Orsaia

1 **A. Yes.**

2 **Q. On how many occasions?**

3 **A. We're talking, any kind of**

4 **discrimination?**

5 **Q. Any form of discrimination.**

6 **A. I'm not in a position to give you an**

7 **exact number. In terms of those that I was**

8 **directly involved in and would have knowledge of,**

9 **I would say approximately three.**

10 **Q. Apart from plaintiff, who are the**

11 **other three?**

12 **A. I don't know that I'm allowed to**

13 **provide you with that information.**

14 **Q. You're certainly -- these could be**

15 **cases that are pending?**

16 **MR. KEIL: If you are aware**

17 **of any claims, name the employee involved**

18 **if you can recall it.**

19 **A. Mary Maicovski.**

20 **Q. Can you spell Maicovski.**

21 **A. I think it's M-a-i-c-o-v-s-k-i.**

22 **Elizabeth; I can't remember the last**

23 **name.**

24 **Q. Is it the social worker you were**

25

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Pat Orsaia

1 referring to?

2 **A. No. It seems to me there is a**

3 **third, but I'm not able to put a name to it.**

4 **Q. Since I couldn't possibly pronounce**

5 **Mary's last name, I'm going to refer to her as**

6 **Mary. You'll know who I'm referring to; is that**

7 **right?**

8 **A. Yes.**

9 **Q. What was the nature of her claims?**

10 **A. As I recall, Mary Maicovski's**

11 **complaint was based on gender.**

12 **Q. What department does she work in?**

13 **A. Security.**

14 **Q. When did she make her complaint?**

15 **A. I don't recall the exact date.**

16 **Q. What, in reference to gender, did**

17 **she complain about?**

18 **A. She alleged that we terminated her**

19 **employment based on the fact that she was a**

20 **female.**

21 **Q. When was her position terminated?**

22 **A. I don't recall the exact date.**

23 **Q. Do you recall -- withdrawn.**

24 **What was -- did she file a formal**

25

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Pat Orsaia

1 complaint in court?

2 **A. As I recall, she first filed a**

3 **complaint with the Division of Human Rights and**

4 **Opportunities, and then she brought a private**

5 **lawsuit.**

6 **Q. Do you know what forum she brought**

7 **that in - federal or state court?**

8 **A. I don't know.**

9 **Q. Do you know whether the case was**

10 **resolved while you were still employed at**

11 **Lawrence?**

12 **A. It was.**

13 **Q. How so?**

14 **A. The original complaint to the EEOC**

15 **or the State Division of Human Rights, was found**

16 **to have no merit. In terms of the lawsuit, I**

17 **believe it was settled as a nuisance -- for**

18 **nuisance value. I'm trying to remember exactly.**

19 **Q. What about Elizabeth's?**

20 **A. Elizabeth's complaint was for an**

21 **allegation of sexual harassment.**

22 **Q. When?**

23 **A. Approximately, three years ago.**

24 **Q. Which employee or employees did it**

25

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Pat Orsala

1 concern?

2 **A. Her allegation was against a**

3 **co-worker in the pharmacy department, whose name**

4 **I don't recall.**

5 **Q. Male worker?**

6 **A. Yes.**

7 **Q. Did she bring that -- withdrawn.**

8 **Was that -- did she file a lawsuit,**

9 **to your knowledge?**

10 **A. I believe she filed a complaint as**

11 **well, which was dismissed.**

12 **Q. When you say "a complaint," where?**

13 **A. I believe, with EEOC.**

14 **Q. And you say it was dismissed.**

15 **Did she, thereafter, file a federal**

16 **lawsuit?**

17 **A. I don't believe so.**

18 **Q. Is she still an employee, to your**

19 **knowledge?**

20 **A. No.**

21 **Q. Did she leave -- what were the**

22 **circumstances in which she ceased employment?**

23 **A. She resigned.**

24 **Q. Was this rather than face**

25

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Pat Orsala

1 termination?

2 **A. No.**

3 **Q. Were you employed at Lawrence at the**

4 **time?**

5 **A. Yes.**

6 **Q. Did she have an exit interview?**

7 **A. Yes, she did.**

8 **Q. Did she indicate why she was**

9 **resigning?**

10 **A. Yes. She provided me with, as I**

11 **recall, a one- or two-page letter indicating her**

12 **reasons for leaving.**

13 **Q. What was the substance of the**

14 **reasons of her leaving?**

15 **A. The substance of it was that after**

16 **we had done our internal investigation and found**

17 **that her allegation could not be corroborated by**

18 **any of the witnesses she named, her department**

19 **director agreed, at Elizabeth's request, to do**

20 **her best to schedule Elizabeth and the person she**

21 **made the allegations against, to try to not have**

22 **them in the same schedule or be in the department**

23 **alone whenever possible.**

24 **Shortly thereafter, Elizabeth was**

25

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Pat Orsala

1 scheduled to work with several other people in

2 the department.

3 She came in; she saw that the person

4 she made the allegations against was in the same

5 department, physically. And she said that that

6 was unacceptable to her, and she decided to

7 resign.

8 **Q. Apart from what turns out to be**

9 **formal complaints with the EEOC and the one filed**

10 **in court, did anyone, while you were HR director**

11 **or in your previous position, ever come to you,**

12 **making claims of discrimination?**

13 **A. There were many occasions in the**

14 **course of my employment at Lawrence and similar**

15 **positions with other institutions, where**

16 **employees would come forward and discuss a**

17 **concern that might involve a comment made by a**

18 **co-worker or by a leader in the department, or a**

19 **question regarding enforcement of a policy, a**

20 **question regarding corrective action that had**

21 **been issued to them, or seeking to clarify our**

22 **corrective-action policy.**

23 **There were times during those**

24 **discussions when employees would use the word**

25

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Pat Orsala

1 "harassment," or say things like, I feel like my

2 co-worker is harassing me, or ask me a question

3 if something constituted harassment.

4 And we would have that discussion,

5 and I would answer their questions. And most

6 typically, we were able to come to some

7 resolution where the individual understood that

8 an isolated incident or comment did not

9 constitute harassment. And we were able to --

10 and I was able to facilitate some sort of

11 resolution of their concern with the other

12 person.

13 **Q. Did you ever reduce any of those**

14 **communications in writing?**

15 **A. I can't say I never did; but**

16 **typically in those situations, I would not reduce**

17 **it to writing.**

18 **Q. As you sit here today, can you**

19 **recall any instance in which an employee came to**

20 **you about what they perceived to be**

21 **discrimination and you reduced it to writing,**

22 **while you were at Lawrence Hospital?**

23 **A. Not that I can recall.**

24 **Q. Do you know who Ed Diner is?**

25

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A. President and CEO of Lawrence Hospital Center.

Q. Did Ms. Galloway ever come to you to express any concerns she had relating to Cathy Magone?

A. Talking about Denise Galloway?

Q. Denise Galloway.

A. Denise Galloway came to me -- Denise Galloway was a supervisor in the social work department, who had been at Lawrence Hospital Center for many years. At one point, there was an open position created. It was a new position reporting to Cathy Magone. I believe the title was assistant director of case management and social work. The recruitment process was ongoing. And an individual was selected to fill that position.

Denise Galloway came to see me -- I believe it was shortly after this person started work. And Denise was concerned that because this new position had been created, that it was somehow a threat to her own job security. She specifically asked me to clarify why it was that both of them had similar supervisory types of

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titles in the same department.

And Cathy Magone's name came up because Denise appropriately said that Cathy had created this position in the department and had made a hiring decision to hire this other person.

Denise had not applied for that job, but she had some concern about where she fit in the overall scheme of things in the department, now that this other position had been created.

And that is what we talked about.

Q. Did Ms. Galloway ever express any other concerns relating to Cathy Magone?

A. Denise said to me -- that wasn't at the same meeting, but I do recall Denise telling me that she would have liked to have seen the department expanded - meaning, more positions, more social work positions created.

Q. How many social work positions were there at the time Ms. Galloway was working at Lawrence?

A. I believe it was Denise plus two social workers. It may have been Denise plus one social worker; I'm not positive.

Q. Was Elizabeth one of those social

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workers?

A. Elizabeth was a social worker there, yes.

Q. Did Ms. Galloway ever express any other concerns with respect to Ms. Magone?

A. Not that I recall, no.

Q. Did you ever advise Ms. Newmark, in words or substance, that other employees had complained about Ms. Magone to you or in your presence?

A. No.

Q. Did the social worker, as opposed to Elizabeth --

A. Elizabeth Basil?

Q. Yes; did she ever express her concerns to you about Cathy Magone?

A. Only as I have already stated, in terms of during her exit discussion and the staffing, her concerns about the staffing, and in the social work department.

Q. Who is Diane Lance?

A. Diane Lance is the person who was hired into the new position that I just spoke about, that Denise Galloway came to see me about.

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Q. Do you know whether Diane Lance ever expressed concern to you or anyone else about Cathy Magone?

A. Diane Lance met with me, but it was not about Cathy Magone.

Q. What was it concerning?

A. It was concerning the fact that she, Diane, was responsible to manage the case managers and social workers; and within the group of case managers, there were -- this was early in Diane's tenure -- there were -- there was some level of dysfunction with two or three of the case managers. And Diane was venting to me, as a new manager, about the challenges she faced in trying to get them to accept her as the leader and cooperate with what she set out in terms of their work assignments.

MS. NICAJ: Mark this as 25.

(Whereupon, 10/5/06 e-mail from Cathy Magone to Pat Orsala was marked as Plaintiff's Exhibit 25, for identification.)

Q. I'm going to direct your attention to what has been marked as Plaintiff's Exhibit 25, for identification. (Handing)

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Do you recognize that document?

A. It's an e-mail from Cathy Magone to me, sent on October 5.

Q. Did you receive it on or about October 5th, 2006?

A. I would assume I did, yes.

Q. The subject is Carole Newmark. It says, "Pat, just wanted you to know that Carole picked up her e-mail at 5:30 last night and has not responded or spoken to me about it."

Do you see that?

A. Yes.

Q. Was that in reference to your earlier testimony when you -- when I asked you a series of questions about Ms. Magone and you mentioned that there was an e-mail exchange concerning Ms. Newmark's receipt of responsive e-mail from Ms. Magone --

MR. KEIL: Objection as to form.

MS. NICAJ: Withdrawn.

Q. What do you -- taking a look at Plaintiff's Exhibit 25, do you know what Ms. Magone references mean by, "Carole picked up

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her e-mail"? What e-mail is she referring to?

A. I think Cathy is referring to the e-mail she sent Carole, which again attempted to clarify, in writing, what went into Cathy's decision to assign Nicole to the palliative-care program.

Q. And you asked her for a -- to find out when, if she received any response from Ms. Newmark?

A. I asked Cathy if her e-mail had prompted any further dialogue with Carole.

Q. October 5th, the date in which Ms. Magone e-mailed you, is the date in which Ms. Newmark was terminated; isn't that right?

A. Yes.

Q. To your knowledge, did anything occur from September 29th, 2006, until October 5th, 2006, concerning Ms. Newmark's performance -- anything new; additional absences, new incidents?

A. I do recall Cathy told me that she became aware during that time period, through some other source, that there had been some communication to Ms. Newmark from the registered nurse assigned to the palliative-care project,

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and that Cathy was concerned that Carole had not brought Cathy into the loop about that.

Q. I'm sorry. I'm not -- what are you referring to? What communication?

A. I don't know exactly what the nature of the communication was. Cathy told me that she had already stated to me and to Carole that Cathy was concerned that Carole had not made any progress to date on the project that she had been assigned to, the mental-health project. I'll call it that for lack --

Q. You knew that already; you had known that already?

A. Yes, I knew that already.

Q. What are you referring to about the palliative care?

A. I'm not referring to palliative care.

Q. I'm sorry; I misheard you, then. What palliative-care project are you referring to?

A. I need to clarify that. I misspoke. I meant the mental-health project.

Q. You knew about that previous to

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that; right -- about the issue with the mental-health project you testified to?

A. I knew that Cathy had performance concerns in terms of Carole not making any progress on the mental-health program.

Q. Right.

A. In response to your question -- what, if anything, new from a performance perspective was brought to my attention during that time period -- what I'm saying is that during that time period, Cathy told me that she was even more concerned about Carole's lack of progress in regards to the mental-health project, because she had become aware that, in fact, Carole didn't share with her that the nurse, who was supposed to be working with Carole on this and had attended the training with her on the mental-health project, had communicated with Carole about the project. And Carole failed to tell Cathy that there had been this communication.

Q. So, there had been some progress or --

A. No; not only had there been no progress, Carole, knowing that Cathy was keenly

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1 interested in seeing progress and had prompted

2 Carole about it, Carole received some

3 communication from the RN she was supposed to be

4 working with on the project and did not go to

5 Cathy to give her an update, and Cathy was

6 concerned about that.

7 Q. So, the fact that she didn't relay a

8 communication she had with a nurse, she was

9 concerned about?

10 A. Yes, yes. Cathy was concerned that

11 Carole did not relay to Cathy that there had been

12 some communication or some update regarding the

13 project. I don't know the specifics of it.

14 Q. Do you know when Carole Newmark

15 communicated with that nurse?

16 A. I don't.

17 Q. Do you know what the nurse's name

18 is?

19 A. No.

20 Q. Do you know where she works or where

21 she is assigned to?

22 A. No, I don't.

23 Q. So, in fact, there had been

24 communications concerning the mental-health

25

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Pat Orsaia

1 department with Ms. Newmark and the nurse, and I

2 just want to clarify something: You're saying

3 that Ms. Magone had an issue because Ms. Newmark

4 had been communicating with the nurse and hadn't

5 relayed that communication to her?

6 A. Not exactly. I'm saying that

7 Ms. Magone relayed to me that she was concerned

8 because it came to her attention that the nurse

9 had initiated communication with Carole Newmark

10 about the project, and Carole had not updated her

11 director about that.

12 Q. About the fact that the nurse called

13 her about the project?

14 A. I don't know if it was a call, an

15 e-mail, written correspondence. I don't know

16 what the nature of the communication was or what

17 the specifics of it were.

18 Q. And that was her concern?

19 A. That was her concern.

20 Q. Anything else? Was there anything

21 else from September 28th, until October 5th --

22 withdrawn.

23 When did Ms. Magone decide to

24 terminate Ms. Newmark's employment?

25

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Pat Orsaia

1 A. I don't know exactly.

2 Q. When did she communicate that to

3 you?

4 A. Sometime between September 28th and

5 October 5th.

6 Q. Apart from -- withdrawn.

7 Didn't she communicate with you

8 sooner than October 5th?

9 A. She communicated that she had

10 concerns about Carole's attendance and

11 performance prior to September 28th.

12 Q. When did she do so for the first

13 time, to you?

14 A. I don't recall exactly.

15 Q. From September 28th through

16 October 5th, any other communications with

17 Ms. Magone about Ms. Newmark's performance, any

18 that you have not testified to?

19 A. No.

20 Q. Any other concerns?

21 A. No.

22 Q. Have you communicated with anyone

23 concerning your deposition here today, apart from

24 Mr. Keil?

25

COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1 A. About the deposition?

2 Q. About the deposition.

3 A. No.

4 Q. Have you been in contact with any

5 former employees of Lawrence Hospital since you

6 left, apart from the two communications you have

7 had with Ms. Magone?

8 A. Yes; I have communicated with some

9 of my former colleagues at Lawrence Hospital

10 Center.

11 Q. With whom?

12 A. With members of the human resources

13 department; with the former vice-president of

14 human resources who left Lawrence, before I did;

15 I have communicated with her. I spoke with the

16 nurse manager at the ER at the time when I had a

17 friend who was a patient at Lawrence. I spoke

18 with another former member of the human resources

19 department who left Lawrence before I did. I

20 spoke with people at the switchboard.

21 That's all I can recall.

22 Q. Do you know whether -- how long the

23 probationary period for Ms. Newmark's employment

24 is?

25

COMPU-TRAN SHORTHAND REPORTING

153

Pat Orsaia

1
02:17:36PM 2 **A. Yes.**
02:17:56PM 3 **Q. Or was?**
02:18:00PM 4 **A. Yes.**
02:18:03PM 5 **Q. How long?**
02:18:05PM 6 **A. Six months.**
02:18:07PM 7 **Q. Do you know when her date of hire**
02:18:09PM 8 **was?**
02:18:11PM 9 **A. I don't know the precise date, no.**
02:18:13PM 10 **Q. Do you know whether she was hired on**
02:18:15PM 11 **or about March 20th, 2006?**
02:18:17PM 12 **A. That sounds correct.**
02:18:19PM 13 **Q. And she was fired after that six-**
02:18:21PM 14 **month probationary period?**
02:18:23PM 15 **A. Her probationary period had been**
02:18:25PM 16 **extended.**
02:18:27PM 17 **Q. By whom?**
02:18:29PM 18 **A. By her department director, as per**
02:18:31PM 19 **policy.**
02:18:33PM 20 **Q. Was it required that she -- when you**
02:18:35PM 21 **say "per policy," what policy are you referring**
02:18:37PM 22 **to?**
02:18:39PM 23 **A. The policy is called Probationary**
02:18:41PM 24 **Periods. It's a human resources policy.**
02:18:43PM 25 **Q. What does it say, in words or**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1
02:20:00PM 2 **A. Are there any occasions in which --**
02:20:02PM 3 **Q. No. Does it have to be approved**
02:20:04PM 4 **by --**
02:20:06PM 5 **A. Does what have to be approved?**
02:20:08PM 6 **Q. The probationary extension period.**
02:20:10PM 7 **A. The actual practice is that any time**
02:20:12PM 8 **a department leader is recommending that a**
02:20:14PM 9 **probationary period be extended, there is a**
02:20:16PM 10 **discussion with human resources.**
02:20:18PM 11 **Q. Is that discussion anywhere in**
02:20:20PM 12 **writing about the extension of a probationary**
02:20:22PM 13 **period of an employee?**
02:20:24PM 14 **A. Not necessarily.**
02:20:26PM 15 **Q. Was that done in Ms. Newmark's case?**
02:20:28PM 16 **A. Yes.**
02:20:30PM 17 **Q. Did you submit anything in writing,**
02:20:32PM 18 **extending her probationary period?**
02:20:34PM 19 **A. Did I? No.**
02:20:36PM 20 **Q. Did Ms. Magone?**
02:20:38PM 21 **A. It would have been Ms. Magone's**
02:20:40PM 22 **responsibility to communicate the extension for**
02:20:42PM 23 **Ms. Newmark. Which, as far as I know, she did.**
02:20:44PM 24 **Q. Did Ms. Magone send anything to you**
02:20:46PM 25 **in writing, which requested an extension of the**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1
02:18:45PM 2 **substance, the policy?**
02:18:47PM 3 **A. It says that the probationary period**
02:18:49PM 4 **for exempt-level employees is six months. It says**
02:18:51PM 5 **the probationary period for non-exempt employees**
02:18:53PM 6 **is three months. It says that at the department**
02:18:55PM 7 **manager's discretion, probation can be extended**
02:18:57PM 8 **for a period of up to three months. It says that**
02:18:59PM 9 **the probationary period is meant to introduce the**
02:19:01PM 10 **individual to the organization, and vice versa.**
02:19:03PM 11 **And that at any time during the probation, either**
02:19:05PM 12 **party can determine that they do not want to**
02:19:07PM 13 **continue the employment relationship.**
02:19:09PM 14 **Q. Does that require approval from**
02:19:11PM 15 **anyone to extend the probationary period?**
02:19:13PM 16 **A. I think it says -- the policy says**
02:19:15PM 17 **it's with discussion with human resources.**
02:19:17PM 18 **Q. Discussion or approval?**
02:19:19PM 19 **A. I don't know. You have the policy**
02:19:21PM 20 **in front of you. Maybe you can tell me what it**
02:19:23PM 21 **says - discussion or approval.**
02:19:25PM 22 **Q. To your knowledge, as the director**
02:19:27PM 23 **of HR, are there any requirements that the head**
02:19:29PM 24 **of a department needs the approval of the HR**
02:19:31PM 25 **department?**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

1
02:21:00PM 2 **probationary period?**
02:21:02PM 3 **A. Well, she would not have requested**
02:21:04PM 4 **it.**
02:21:06PM 5 **Q. Did she?**
02:21:08PM 6 **A. She would have discussed it with me.**
02:21:10PM 7 **Q. Did she submit anything in writing**
02:21:12PM 8 **requesting an extension of probation?**
02:21:14PM 9 **A. No.**
02:21:16PM 10 **Q. Did you submit anything in writing**
02:21:18PM 11 **approving an extension of a probationary period?**
02:21:20PM 12 **A. No.**
02:21:22PM 13 **Q. Did Ms. Magone ever recommend**
02:21:24PM 14 **Ms. Newmark's termination in writing?**
02:21:26PM 15 **A. No.**
02:21:28PM 16 **Q. Do you know if there are any**
02:21:30PM 17 **policies at Lawrence concerning that?**
02:21:32PM 18 **A. The policy suggests that any**
02:21:34PM 19 **decision to terminate employment, would be**
02:21:36PM 20 **discussed with human resources. And there is a**
02:21:38PM 21 **policy, I believe, on termination, that states**
02:21:40PM 22 **that the person who can approve terminations, is**
02:21:42PM 23 **the vice-president of human resources or her**
02:21:44PM 24 **designee.**
02:21:46PM 25 **Q. I'm going to show you what was**
COMPU-TRAN SHORTHAND REPORTING

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Pat Orsaia

2 previously marked as Plaintiff's Exhibit 21, for
3 Identification.

4 I would like to direct your
5 attention to Plaintiff's Exhibit 1, N425,
6 directing your attention to 4.3, Paragraph 4.3:
7 "During the last week of the probationary period,
8 the supervisor will conduct a performance-review
9 discussion with the employee."

10 Do you see that?

11 **A. Yes.**

12 **Q.** Do you know whether Ms. Magone, the
13 last week before the probationary period, the
14 original probationary period for Ms. Newmark
15 ended, had that meeting with her?

16 **A. Well, the probationary period being
17 extended, I don't know that she did or didn't,
18 but I don't believe that is the scenario that is
19 discussed --**

20 **Q.** I'm asking you --

21 **A. -- in the policy.**

22 **Q.** I'm asking you a question: Do you
23 know whether Ms. Magone met with Ms. Newmark a
24 week prior to the original probationary period
25 ending, to discuss her performance?

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Pat Orsaia

2 **A. I don't know that.**

3 **Q.** I'm going to direct your attention
4 to 4.5, of the same page. It says, "The
5 supervisor may recommend termination of
6 employment at any time during the probationary
7 period. This recommendation must be submitted in
8 writing to human resources and the department
9 head."

10 Did Ms. Magone ever submit her
11 recommendation prior to the termination in
12 writing?

13 **A. No, but she is the department head.**

14 **Q.** I understand, but this says this
15 recommendation must be submitted in writing to
16 human resources. I'm asking --

17 **A. This is referencing what the
18 supervisor of the department is supposed to do at
19 the supervisory level.**

20 **Q.** I'm asking you: Did Ms. Magone
21 submit a request, a recommendation for
22 termination to you prior to Ms. Newmark's
23 termination?

24 **A. Not in writing, no.**

25 **Q.** Apart from Ms. Magone, did you

COMPU-TRAN SHORTHAND REPORTING

1

Pat Orsaia

2 communicate with anyone else concerning Carole
3 Newmark while you were employed at Lawrence?

4 **A. Yes.**

5 **Q.** With who?

6 **A. Deb Gogliettino, vice-president of
7 human resources.**

8 **Q.** Anyone else?

9 **A. Not that I recall.**

10 **Q.** When did you communicate with
11 Ms. Gogliettino?

12 **A. I don't recall the exact date.**

13 **Q.** Was it in or around the time that
14 Ms. Newmark's employment was terminated?

15 **A. It would have been before
16 Ms. Newmark separated employment.**

17 **Q.** How do you know it would have been
18 before?

19 **A. Because it was my practice to speak
20 to the person who I reported to, who was
21 Ms. Gogliettino, about any recommendations for
22 termination or similar job actions.**

23 **Q.** Do you recall doing so in this
24 instance?

25 **A. Yes.**

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Pat Orsaia

2 **Q.** Was your communication with
3 Ms. Gogliettino in writing, verbally, or some
4 other manner?

5 **A. Verbally.**

6 **Q.** And was that in person or via
7 telephone?

8 **A. In person.**

9 **Q.** And whose office was that in?

10 **A. Deb's office.**

11 **Q.** Was this before or after the
12 September 28th, meeting?

13 **A. I don't recall.**

14 **Q.** What did you say to Ms. Gogliettino?

15 **A. I told her that I had spoken with
16 Cathy Magone about performance and attendance
17 issues with Ms. Newmark, who was still in her
18 probationary period; and that Cathy's decision,
19 which I supported, was to separate employment.**

20 **Q.** Did you communicate with
21 Ms. Gogliettino, that plaintiff, Ms. Newmark, had
22 expressed concern about Ms. Magone's using the
23 word or words, "young" or "younger," in reference
24 to her selection of Nicole Serra?

25 **A. Yes.**

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 02:30:47PM 2 **Q.** At this meeting or some other
 02:30:49PM 3 meeting?
 02:30:51PM 4 **A.** To the best of my recall, I told
 02:30:53PM 5 Ms. Gogliettino that prior to this, prior to this
 02:30:55PM 6 separation meeting.
 02:30:57PM 7 **Q.** You advised Ms. Gogliettino of what
 02:30:59PM 8 Ms. Newmark had said prior to the separation
 02:31:01PM 9 meeting with Ms. Gogliettino?
 02:31:03PM 10 **A.** Yes.
 02:31:05PM 11 **Q.** On how many occasions did you
 02:31:07PM 12 communicate on the subject of Carole Newmark to
 02:31:09PM 13 Ms. Gogliettino?
 02:31:11PM 14 **A.** Probably three, which would have
 02:31:13PM 15 included when I told her about Carole's
 02:31:15PM 16 perception of Cathy's use of the word
 02:31:17PM 17 "young." A second time was when -- as I just
 02:31:19PM 18 mentioned, when I advised her about Cathy's
 02:31:21PM 19 concerns of attendance and performance with
 02:31:23PM 20 Carole during probation and that we were going to
 02:31:25PM 21 separate employment. And then, after Carole's
 02:31:27PM 22 exit.
 02:31:29PM 23 **Q.** The first time you communicated with
 02:31:31PM 24 Ms. Gogliettino was about Ms. Newmark's concerns;
 02:31:33PM 25 is that right?

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 02:32:31PM 2 **A.** Yes.
 02:32:33PM 3 **Q.** When did that happen?
 02:32:35PM 4 **A.** I don't know the exact date.
 02:32:37PM 5 **Q.** Was this at her office, or did the
 02:32:39PM 6 communication take place in some other manner?
 02:32:41PM 7 **A.** To the best of my recall, it was in
 02:32:43PM 8 her office.
 02:32:45PM 9 **Q.** What, in words or substance, did you
 02:32:47PM 10 say to her?
 02:32:49PM 11 **A.** I told her that -- I told Deb that I
 02:32:51PM 12 was attempting to facilitate a resolution of
 02:32:53PM 13 Carole's concern about Cathy's use of the word
 02:32:55PM 14 "young" in relation to Carole not being assigned
 02:32:57PM 15 to the palliative-care project.
 02:32:59PM 16 **Q.** When did you communicate this to
 02:33:01PM 17 Ms. Gogliettino? Was it before or after the
 02:33:03PM 18 September 28th meeting?
 02:33:05PM 19 **A.** To the best of my recall, it was
 02:33:07PM 20 before.
 02:33:09PM 21 **Q.** What was Ms. Gogliettino's response,
 02:33:11PM 22 if any?
 02:33:13PM 23 **A.** She asked me the specifics: What
 02:33:15PM 24 was Carole's perception? What was Cathy's
 02:33:17PM 25 response? Sort of, you know, how the events had

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 02:34:00PM 2 unfolded.
 02:34:02PM 3 **Q.** What else did she say, if anything?
 02:34:04PM 4 **A.** I provided her with the details
 02:34:06PM 5 about what I had communicated to Carole. I
 02:34:08PM 6 advised her that it was my impression that Carole
 02:34:10PM 7 was disappointed about not having been assigned
 02:34:12PM 8 to the palliative-care program. That although
 02:34:14PM 9 Cathy had tried to clarify her use of the word
 02:34:16PM 10 "young," Carole did not appear to accept Cathy's
 02:34:18PM 11 explanation. And that we would continue to try
 02:34:20PM 12 and resolve it.
 02:34:22PM 13 **Can I ask for a break or some idea**
 02:34:24PM 14 **of how much longer you will be?**
 02:34:26PM 15 **MS. NICAJ:** Sure. Let's
 02:34:28PM 16 take a break.
 02:34:30PM 17 *(Recess held)*
 02:34:32PM 18 CONTINUED EXAMINATION BY MS. NICAJ:
 02:34:34PM 19 **Q.** Going back to the first discussion
 02:34:36PM 20 with Ms. Gogliettino, what else did you say at
 02:34:38PM 21 this meeting, apart from what you have already
 02:34:40PM 22 testified to?
 02:34:42PM 23 **A.** That's all I recall.
 02:34:44PM 24 **Q.** What else do you recall her saying,
 02:34:46PM 25 apart from what you have already testified to?

COMPU-TRAN SHORTHAND REPORTING

1 **Pat Orsaia**
 02:36:54PM 2 **A.** That's all I recall her saying.
 02:36:56PM 3 **Q.** Do you know whether she reduced
 02:36:58PM 4 anything you said to her, in writing?
 02:37:00PM 5 **A.** Not to my knowledge.
 02:37:02PM 6 **Q.** Going back to the second meeting
 02:37:04PM 7 with her, you said you raised -- it was around
 02:37:06PM 8 the time of Ms. Newmark's exit; is that right?
 02:37:08PM 9 **A.** Prior to her exit discussion.
 02:37:10PM 10 **Q.** What did you say to Ms. Gogliettino?
 02:37:12PM 11 **A.** I told her that I had spoken with
 02:37:14PM 12 Cathy Magone, and Cathy had provided me with the
 02:37:16PM 13 specifics to support her concerns in the areas of
 02:37:18PM 14 attendance and performance for Carole Newmark,
 02:37:20PM 15 that Carole was still in her extended
 02:37:22PM 16 probationary period, and that the decision was to
 02:37:24PM 17 separate her from employment.
 02:37:26PM 18 **And I probably told her the date and**
 02:37:28PM 19 **time of the meeting.**
 02:37:30PM 20 **Q.** You indicated also that --
 02:37:32PM 21 withdrawn.
 02:37:34PM 22 Did she say anything to you at this
 02:37:36PM 23 meeting?
 02:37:38PM 24 **A.** She just indicated that she
 02:37:40PM 25 understood, and thanked me for the information.

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Pat Orsaia

Q. How long between the two meetings - the first one you testified to and the second one?

A. Approximately, two to four weeks. I can't say exactly.

Q. And you had a third communication with her after Ms. Newmark was terminated?

A. Yes.

Q. How long after?

A. Either the same day or the next day.

Q. What, in words or substance, did you say to her, and what did she say to you?

A. I told her that Cathy and I had had the exit discussion with Carole, depending on when I spoke with her, that day or the next day. I either told her that Carole was going to relay her decision to me about the option of resigning, or that she already had relayed her decision to me. I told Ms. Gogliettino that Cathy had contacted me to say that Carole's final words to Ms. Magone upon her exit were inappropriate and involved profanity, and that I had asked Cathy to put that in an e-mail.

I told Deb -- it may have been the

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Pat Orsaia

second time I spoke with her, regarding Carole's attendance and performance and the decision to have her exit -- it may have been at that meeting that I told Deb, that Cathy had again attempted to help Carole understand her use of the word "young" and that it had not played any part in her decision about the project assignments, that no one's age played a part in it. I gave Deb that information.

Q. Apart from what you have already testified, did you or she say anything else at the third meeting with Ms. Gogliettino?

A. Yes. I told Deb that we, in human resources, had a heightened sensitivity to the fact that Carole had now been exited and that her daughter Janice was still an employee at Lawrence Hospital Center; and that Janice, in the course of her work, would come into the human resources department almost daily. And we just wanted to be sensitive to that fact and, you know, careful about making sure that Carole Newmark's situation was held in confidence when her daughter attempted to discuss it.

I told Deb that I was sending Carole

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Pat Orsaia

Newmark the termination letter, as per her decision.

To the best of my recall, I stated to Deb that it was our intention to pay out whatever accrued PTO time Carole had in her bank at the time that she left, even though we were not obligated to do so.

Q. What is PTO time?

A. Paid time off.

Q. Did she have any accrued pay time off?

A. I don't know. It would have been up to her department to assess those accruals and arrange for payment.

Q. Do you know if she was paid for any PTO?

A. I don't know for sure.

Q. Apart from Deb and Ms. Magone, did you communicate with anyone else concerning Carole Newmark while you were employed at Lawrence?

A. I communicated with John Keil.

Q. Did you communicate with Mr. Keil while Ms. Newmark was employed there?

A. Yes.

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Pat Orsaia

Q. Without getting into the substance of any communications with Mr. Keil, when did you first communicate with him concerning Carole Newmark?

A. I don't recall exactly.

Q. Was this before or after September 28th?

A. It would have been after Carole separated.

Q. Was that in connection with the EEOC charge?

A. Yes.

Q. Apart from Mr. Keil, anyone else you communicated with concerning Carole Newmark?

A. Not that I recall.

Q. As you sit here today, are there any changes or things you want to supplement to your previous testimony?

A. No.

MS. NICAJ: I think I'm about done. Just give me one moment.

(Pause in the record)

Thank you. I have nothing further.

(Time noted: 2:50 p.m.)

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INDEX

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PAGE# LINE#

4

EXAMINATION BY:

MS. NICAJ 4 10

7

DOCUMENT/DATA REQUESTED:

NONE

10

PLAINTIFF'S EXHIBITS:

24 - E-mail exchange
between Pat Orsala and
Carole Newmark 57 11

14

25 - 10/5/06 e-mail from
Cathy Magone to
Pat Orsala 144 20

16

DEFENDANT'S EXHIBITS:

NONE

19

RULINGS CONTEMPLATED:

NONE

22

23

24

25

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1

CORRECTION SHEET

3

Re: Carole Newmark -v- Lawrence Hospital, et al

5

The following corrections, additions
or deletions were noted on the transcript of
the testimony which I gave in the above-
captioned matter, held on March 3, 2008.

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PAGE(S) LINE(S) SHOULD READ

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COMPU-TRAN SHORTHAND REPORTING

COMPU-TRAN SHORTHAND REPORTING

1

STATE OF NEW YORK)

) ss:

COUNTY OF WESTCHESTER)

5

6

I, PAT ORSAIA, the witness herein,
having read the foregoing testimony of the pages
of this deposition, do hereby certify it to be a
true and correct transcript, subject to the
corrections, if any, shown on the attached page.

12

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19

PAT ORSAIA

20

Subscribed and sworn to before me
this ____ day of _____, 2008.

23

24

25

1

STATE OF NEW YORK)

) ss:

COUNTY OF WESTCHESTER)

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IN WITNESS WHEREOF, I have hereunto
set my hand this ____ day of _____, 2008.

LISA REGEN,
NOTARY PUBLIC

COMPU-TRAN SHORTHAND REPORTING

1

CORRECTION SHEET

3

Re: Carole Newmark -v- Lawrence Hospital, et al

5

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EXHIBIT 26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CAROLE NEWMARK,

Plaintiff,

-against-

INDEX NO.
07-CIV-2861 (CLB)

LAWRENCE HOSPITAL CENTER AND PAT ORSAIA,
Defendants.

-----x

222 Bloomingdale Road
White Plains, New York
March 18, 2008
9:59 a.m.

EXAMINATION BEFORE TRIAL of NICOLE A. SERRA,
a witness testifying on behalf of the Defendant,
LAWRENCE HOSPITAL CENTER in the above-captioned
matter, held at the above time and place, before a
Notary Public of the State of New York.

Lisa M. Rosso,
Shorthand Reporter

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Page 4

APPEARANCES:

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Attorneys for Defendants
747 Third Avenue
New York, New York 10017
BY: JOHN P. KEIL, ESQ.

ALSO PRESENT:
CAROLE NEWMARK

oOo

221. UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent.
An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the Examination Before Trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections for the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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Page 5

221. UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS 221.1

221.1 Objections at Depositions.

(a) Objections in general: No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c), or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by the CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made.

A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

NICOLE A. SERRA,

having been duly sworn by Lisa M. Rosso,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

oOo

EXAMINATION BY MS. NICAJ:

Q. Please state your name and address for the record.

A. Nicole A. Serra, 95 Beekman Avenue,
Apartment 213-G, Sleepy Hollow, New York 10591.

Q. Good morning, Ms. Serra. My name is Drita Nicaj. I represent the plaintiff in this action, Carole Newmark. I will be asking you a series of questions today. I'm looking for truthful and responsive answers; okay?

A. Okay.

Q. All of your responses need to be verbal because the court reporter can't take nods of the head or uh-huhs or ut-uhs; okay?

A. Okay.

Q. If at any time you don't understand the question, haven't heard the question or want the

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question read back, let me know; okay?

A. Okay.

Q. If at any time you want to take a break, what I would ask you to do first, you can take your break --

A. Uh-huh.

Q. -- but answer any pending questions. That is, any questions that have not been fully responded to. Answer the question, then you can take your break; okay?

A. Okay.

Q. If there is anything that you don't understand, let me know.

A. Okay.

Q. If at any time during the course of your deposition you want to add, change, or otherwise supplement a previous response, let me know; I will be happy to give you an opportunity to do that.

A. Okay.

Q. Is there anything that I have said so far that you do not understand?

A. No.

Q. Okay. In addition, from time to time,

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work. I have a license by taking an exam. I'm a licensed clinical social worker.

Q. When did you receive that license?

A. Let's see, initially, my license was -- I need to think.

Q. That's okay.

A. Because I'm not exactly certain. I was grandfathered into the licensed clinical social worker prior to working at Lawrence Hospital. So I would say probably two-and-a-half, two and three-quarter years ago. My initial license was October of '04, I believe.

Q. What do you mean by "grandfathered in"?

A. Because I had all of the criteria, I didn't have to re-take a second test. So I filled out paperwork, and that was submitted, and I received my updated license.

Q. What were the circumstances in which you came to be hired at Lawrence?

A. Actually, through Carole.

Q. Okay.

A. Carole and I worked together previously. I was at Phelps Memorial Hospital Center in Sleepy Hollow. Carole came there about a

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given the nature of the deposition, I may be asking the question, and you may think you know what I'm about to ask you; what I would ask you to do, though, is wait for me to finish and then you can respond; okay?

A. Okay.

Q. One, sometimes I ask a totally different question from the one that you believe I was going to ask. And, two, the court reporter can't take us both talking at once; okay?

A. Sure.

Q. Are you employed?

A. Yes, I am.

Q. By whom are you employed?

A. Lawrence Hospital Center.

Q. For how long?

A. It will be two years on April 24, I think is the exact date.

Q. In what capacity?

A. I'm a social worker there.

Q. Has your title changed at all?

A. No.

Q. What's your educational background?

A. I have a master's degree in social

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year before I had left, a year or so. And her and I were friends at work, and she was looking, at some point, for another job. She told me about her new position, that she was looking at Lawrence Hospital Center, doing something different than what her and I were doing at the time, which was mental health. This was hospital social work which was different. So she had gone over, she had gotten the position, and she had asked me if I was interested, and I was. I had gone over. I interviewed and they hired me.

Q. Okay. Who did you interview with?

A. Cathy Magone, and Diane Lantz; I think it's L-A-N-T-Z.

Q. And after you were interviewed, then what happened?

A. I left. I waited a couple of days. Carole was helpful in facilitating kind of call-backs for me, and they offered me the position.

Q. And that was for a hospital social worker?

A. Uh-huh.

Q. Is that a yes?

A. Yes, I'm sorry.

Q. It's okay.

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A. Yes.

Q. What did you understand that to mean as compared to what you were doing at Phelps?

A. Well, Phelps is psychotherapy. They do mental health counseling in an outpatient clinic setting with psychiatrists and other social workers. And at Lawrence Hospital, we do discharge planning mainly and deal with, basically, any and all social issues that could come up, whether it be someone is homeless, someone needs money, someone has problems at home. So you are giving small doses of supportive counseling to people, but you're not developing a longstanding relationship. Where at Phelps, I would have clients for three, four years. Here, when they're in there for their stay at the hospital, they get discharged, and sometimes you have connection with them for a follow-up or community referral.

Q. How long had Ms. Newmark been employed prior to your start date of April 24th, 2006?

A. About one month. She had gone in March. I think it was the middle to the end of March. We're about a month apart.

Q. And when you were hired, did you

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the majority of the cases, and we get called in for more specific types of situations, social issues. You know, like I said, homeless patients, psychiatric patients, and if there is difficulty within the case or the discharge plan because of a safety issue at home or whatever.

Q. Did there come a time that there was a patient that was due to be discharged, while Ms. Newmark was employed there, that was homeless?

A. I can't speak specifically. But yes, I know that there — we deal with several, many homeless patients.

Q. Was there ever a time that there was a proposal to discharge the homeless patient to a supermarket parking lot?

A. I don't recall that.

Q. Do you recall having any communications with Ms. Newmark in which there was discussion that Cathy Magone wanted a homeless person discharged to a supermarket?

A. No, I don't recall that.

Q. Are there any documents that you can use to refresh your recollection?

A. That I have on myself?

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receive any training?

A. I caught unofficial training. What I feel, that Carole did the best that she could do to train me with the resources that she was provided with.

Q. What do you mean by that?

A. Meaning that I understood, in conversation, with Carole, between her and I, that there was supposed to be a social worker there to — that she would be shadowing. Someone that she had known professionally previously. When Carole had come there, I don't believe that she was there. And she was kind of learning a lot of stuff, you know, by experience, more or less. I know she had previous hospital experience, but that was ten, eleven years before that, and that model has changed. It used to be social-work model, now it's more a case-management-driven department.

Q. What do you understand that to mean as opposed to a social-work model?

A. With social-work model, it was — you had several social workers covering, doing the discharge planning primarily on all of the cases. Now, it's more specified cases. Managers deal with

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Q. No, not necessarily on yourself. Is there anything that you can think of that would refresh your recollection, whether it's here or whether it would be in your notes at the hospital, or anywhere else?

A. There might be. Was it a patient of mine?

Q. I'm asking.

A. Okay.

Q. As you sit here today, can you recall anything that would refresh your memory?

A. No.

Q. Okay.

A. I don't.

Q. Did you have an understanding what your job as a social worker in the case management system would be?

A. It always was changing. There was never a — it was supposed to be one thing at times. At other times it was other things. It was — we had lots of difficulty establishing social-work position within a department. We actually had sat down, Carole and I, at some point with our boss with a document for social work that was supposed to be

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2 kind of revised to reflect what it is, in fact, we
3 were supposed to be doing.

4 Q. And did that occur?

5 A. Yes, it did.

6 Q. Okay. What document are you talking
7 about?

8 A. It's -- it was a document for basically
9 like your job description as social worker.

10 Q. And your boss was who?

11 A. Cathy Magone.

12 Q. And what -- you said this was at a
13 meeting --

14 A. Uh-huh.

15 Q. -- with her? Is that a yes?

16 A. Yes, yes.

17 Q. And what was said during this meeting?

18 A. I don't recall the content of the
19 meeting. I know the meeting was generally about
20 reviewing the documents, seeing how we felt about
21 what was in the document. And if, you know, we felt
22 it was appropriate or not appropriate.

23 Q. And what response, if any, did you or
24 Ms. Newmark have?

25 A. We felt it was appropriate.

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2 Q. What was the document -- withdrawn.
3 What did the document contain specifically, if you
4 recall?

5 A. Different types of, like, overheads
6 about if there is a patient with psychiatric
7 illness, or if their need was to be transferred to
8 another facility, talking about -- just the
9 different types of patients that would be labeled as
10 social-work cases versus the typical patient that
11 comes in that will need a short-term rehab, or will
12 need to have home-care services. Generally, we
13 would not deal with those unless there was a social
14 issue. But oftentimes we would get into situations
15 with our case managers about what they were supposed
16 to be doing, what we were supposed to be doing,
17 whose case it actually was, and that is what drove
18 this meeting. Because there was a lot of confusion,
19 I don't think on my boss's part, but more or less in
20 our departments, about who was supposed to be doing
21 what.

22 Q. When you say your boss's part, who is
23 that?

24 A. Cathy Magone.

25 Q. Okay. And "our department," meaning

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2 who?

3 A. Case management.

4 Q. Okay. Apart from you, Ms. Newmark and
5 Cathy Magone, were there any case managers at the
6 meeting?

7 A. No, not that I recall, no.

8 Q. Was there anything in writing as to
9 what the nature of your responsibilities as a social
10 worker would be as compared to the case managers?

11 A. I'm not sure what you're asking.

12 Q. Was there anything in writing
13 concerning what your job function would be in the
14 case management model?

15 A. That's what this list was that I was
16 talking to you about.

17 Q. What about with respect to what the job
18 responsibilities would be for the case managers and
19 the other staff in the case management model?

20 A. That wasn't really brought into our
21 meeting, because it was more specific about what we
22 were to be doing with those cases.

23 Q. When did this meeting take place?

24 A. I don't recall. It was before --
25 Carole was not there. So it was within the time

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2 between March and October of '06.

3 Q. Who currently supervises you?

4 A. Cathy Magone.

5 Q. Okay.

6 A. And Laurie Bachman.

7 Q. Laurie Bachman is who?

8 A. Laurie Bachman was a case manager. She
9 has been at the hospital for a very long time. And
10 she's within -- I don't want to, I don't know
11 exactly how many months she has been doing this, she
12 moved into the position that Diane Lantz used to
13 occupy, which is like director under my boss.
14 Basically, the person that is dealing with what is
15 going on in our department and issues. So Cathy is
16 not as involved as she was when Laurie was not
17 there.

18 Q. Are there any other social workers
19 employed there?

20 A. No. I'm the only licensed clinical
21 social worker. So when you ask me about
22 supervisions, I'm not really being supervised by
23 someone of my background.

24 Q. When Ms. Newmark was employed there,
25 was she your supervisor?

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2 A. Yes, she was.

3 Q. Are there any per diem social workers
4 employed?

5 A. No. When I first came, there was
6 somebody that was per diem for about two weeks, I
7 guess, in helping the transition with me coming and
8 Carole trying to help me, but that was the last of
9 that situation.

10 Q. How did your job responsibilities
11 change from the time Ms. Newmark was employed to the
12 present?

13 A. From when she had left employment?

14 Q. Yes.

15 A. It just became a lot more. I was alone
16 for almost seven months, covering the entire
17 hospital.

18 Q. How did you receive your assignments?

19 A. How do I receive my assignments?

20 Q. How did you receive your assignments
21 when Ms. Newmark was employed at the hospital?

22 A. There is two ways to receive an
23 assignment. One of them is -- actually, there is
24 more than two ways, there is three ways. A doctor
25 can verbally ask you, you know, Can you see my

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2 Q. January 2007?

3 A. Yes.

4 Q. In what capacity?

5 A. We identify her as the social service
6 coordinator. She is not a social worker. She has a
7 bachelor's in sociology.

8 Q. And the cases get referred to both you
9 and her?

10 A. Right. When she came, I gave -- I
11 was -- I asked, you know, how we can divvy it up,
12 because there was certain floors or units that I
13 preferred to cover. So I specifically asked for her
14 to take the fourth floor, which is postpartum, the
15 NIC-U, maternity and labor and delivery. So she
16 gets all the consults that come from that floor.
17 She also takes consults on one of the wings on Five
18 South, which is med/surge. A lot of people that
19 have hip replacements go onto that floor. And she
20 will cover half of Six North. There is like two
21 sides of the hallway. So she will take the higher
22 side, I take the lower side, in terms of room
23 number.

24 Q. Are there any things that she is unable
25 to do in her capacity?

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2 patient, I have some concerns about social issues?
3 Kind of not the proper way, which is to put an order
4 in the computer for social-work consult; those get
5 faxed over to my office at this point. When Carole
6 was there, we did not have a fax. So now our office
7 secretary will fax them over to my office, and they
8 get divvied out between myself and the other person
9 that is now working there, or case management will
10 make referrals. They will look at cases, and they
11 will decide that there is some particular reason
12 why -- well, they should be deciding on some
13 particular reason why, but they will call us in to
14 help on a case, or take the case, or however you
15 want to look at it.

16 Q. You said that cases currently get
17 divvied up between you and the other person.

18 A. Right.

19 Q. Who's the other person that you're
20 referring to?

21 A. Elaine Tolentino is a new person that
22 came to work for me. She was there a year in
January.

23 Q. So she started when; in 2007?

24 A. She started in -- yes.

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2 A. I personally think there are. She is
3 not trained as a social worker. And I see things
4 that, you know, are difficult for her. One of the
5 main issues I see is her establishing boundaries
6 with families. You deal with a lot of stress in
7 difficult situations, death of patients, people that
8 are in the critical care unit for a long time. And
9 a lot of the times, I know it's hard for her to
10 manage keeping boundaries with families in terms of
11 times that she is spending, things she is doing for
12 the patients.

13 Q. Getting back to when Ms. Newmark was
14 employed there --

15 A. Uh-huh.

16 Q. Actually prior, did there come a
17 time -- did she communicate to you prior to her
18 actual working at Lawrence that she was very
19 interested in the position?

20 A. Did Carole ask me --

21 Q. Yes.

22 A. -- tell me that she was interested in
23 getting the position at Lawrence Hospital?

24 Q. Yes.

25 A. Yes.

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Q. Did she tell you why?

A. I think it was something that would be -- I can't recall specifically what she had said, why it would be, but I know that it would put her in a better position as a supervisory position. I know the salary was better. So those are the things that I can recall specifically.

Q. Do you recall her mentioning anything to you about the formation of palliative care unit being formed at the hospital?

A. I do.

Q. Do you recall whether she expressed an interest in working at that unit?

A. She did.

Q. That was prior to her actually starting in Lawrence?

A. Yes. In between the time when I was, you know -- she was telling me about what was going on, telling me about the job, telling me about the other position as social worker. She also talked about -- there was a new person coming to start palliative care program and she had expressed interest in working in that type of environment.

Q. Was there a palliative care unit that

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that's for patients, you know, there is kind of like a little flow sheet that we can look at, some medical terminology that would refer someone to palliative care. Oftentimes, people associate it with end-of-life or terminal care, which oftentimes it is. But it's also for patients that have, like, MS, longstanding illnesses, helping to deal with their pain management, comfort, it encompasses everything, almost from a psycho-social aspect of all of the different, you know, types of situations that would be going on in that patient's life. And palliative care is utilized to help coordinate and organize the patients and their family or their environment.

Q. Did there come a time that you learned that you would be an active part of the palliative care service?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sorry.

MR. KEIL: That's okay.

Q. That is okay.

MR. KEIL: It's very human to do that.

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was eventually formed?

A. No unit, no.

Q. Or division or program?

A. Programs, right, was developed. Maura Del Bene was the nurse practitioner that came in May, so right after me. And she was working on establishing a palliative care program or service.

Q. Are you involved in that service now?

A. Currently, I'm not the palliative care social worker.

Q. Do you know if there is one?

A. There is one that was just recently hired. I'd say about -- within a month or so, month and a half she has been working for us.

Q. And her name is?

A. Mary O'Donnell, two N's and two L's.

Q. And do you know whether Ms. O'Donnell's duties included anything else apart from that program?

A. They do not. They're strictly for palliative care.

Q. And what do you understand palliative care to be?

A. Well, palliative care is a service

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THE WITNESS: Sorry.

Q. How did you come to learn that?

A. I came to learn one day, and I can't recall the date of the day, but it was before October, it might have been in the beginning of September of '06, I was -- somehow Carole and I were actually near each other on the floor, which was not normal, because normally we're separate, doing separate things. And I know our boss had called her and she said, I have to go to Cathy's office. I said, Fine. I continued on. She left and went off.

About fifteen, twenty minutes later, my phone rang -- we have these phones that we have to carry -- and it was my boss, and she said that she wanted me to come -- my boss, Cathy Magone, wanted me to come to her office, she had to speak with me. So I arrived, I didn't see Carole in between. But I went in there and, basically, that is when she told me that the palliative care service had requested that I be the social worker for the program.

Q. What, if anything, did you say to Ms. Magone?

A. I mean, I told her I was happy, because I, you know, I had been working with Maura. I found

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Maura to be like a mentor to me, as well as she was very intelligent, and she kind of made it easy for me to be interested in the program. I never had intention of, or wasn't even sure that they were choosing one or the other, kind of just came out. I didn't -- I thought that maybe, at some point, they were even going to be asking for like another social worker to be hired strictly for that program. So I thanked her and I agreed to take the position. Not really knowing, you know, what had happened previously, until after when I met up with Carole.

Q. You didn't know that Ms. Newmark had been interested in the palliative care service?

A. Uh-huh.

Q. Is that right?

A. Yes.

Q. Okay. And when you said you didn't know what happened until later when you met up with Carole --

A. Uh-huh.

Q. -- did there come a time you discussed it with Ms. Newmark?

A. I'm sure we had discussion about the program and the fact that, you know, I believe that

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conversations about what happened. I know that, you know, she was unhappy about the situation. But also, she reassured me that she was not angry at me. I never felt that she was angry at me for the situation. It was kind of the thing that was decided that was out of our hands.

Q. Did she ever advise you, in words or substance, what Ms. Magone told her?

A. No.

Q. Okay. Do you recall ever stating -- her ever stating to you that Ms. Magone told her, in words or substance, that the reason you were selected was because you were younger?

A. I did recall Carole saying something to me along the lines about that, you know, longevity or age or something along the lines of that. Carole had -- Carole did say that to me.

Q. But you don't recall exactly what?

A. I don't. It was a long time ago.

Q. Sure. And but Ms. Newmark made it clear to you that she wasn't angry at you?

A. Absolutely.

Q. Okay. When did you cease being involved in the palliative care service?

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she was not happy. I think that she had wanted the social work position.

Q. And when you say you believe she was not happy, what, in words or substance, did she say?

A. I don't recall exact words. But I know, you know, we had conversations about, you know, what the program was. And I know that she expressed to me that she had been told by our boss, Cathy, that she would be the person for the palliative care when she was first coming in; that is what Carole had told me.

Q. And do you recall any communications with Ms. Newmark when -- after you learned that Ms. Magone had selected you for that service?

A. Communications in general?

Q. Yes.

A. Oh, yeah.

Q. Relating to the palliative care.

A. Oh, okay, because Carole and I always talked.

Q. Of course, of course.

A. We always talked. Yes, I mean, and I don't recall specific-like content or conversation, but I know -- I know somewhere that there is

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A. I'm sorry?

Q. When did you stop being involved --

A. Oh.

Q. -- in the palliative care service?

A. I had gone to Ohio with Maura Del Bene, RoseAnn O'Hare and Susan Shepp -- she was the finance person -- to begin looking at how to formulate the program. Because the program was not yet formulated. It was in the process of being formulated, and we were still looking at other people's programs. What were you asking me?

Q. When did you cease or stop being involved?

A. More or less after -- when Carole was no longer at the hospital, my responsibilities of being a social worker for the entire hospital, it was taking precedence, and my boss was more interested in me focusing on -- because I was the only social worker, which makes sense -- the responsibilities of the hospital. I continued to work with Maura and still do to this day. But at some point, her and I just kind of talked to each other about it, and I was not able to do the things that she was needing me to do, because of all of the

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other responsibilities that I had. So we kind of just unofficially, you know, a few months down the line after Carole had left, you know, decided that Maura was basically doing everything on her own, but when Maura was on vacation, I would be covering for her, I would be taking on her palliative care responsibilities to the best of my ability to do so.

Q. Do you know when there was the decision to hire someone full-time, a full-time social worker for the palliative care service?

A. There is no full-time social worker.

Q. Okay. Mary O'Donnell is part-time?

A. Yes, she is part-time. She works almost every day, but it's part-time. It's considered a part-time position. I know that they have been looking for awhile, it's been in the newspapers for months and months. They had another person, Laura Hanlin, who had been hired for part-time, and she did not work out. So she was only there for a short while. And that was last year. She was maybe toward the end of the year, so September, October maybe.

Q. Of 2007 or six?

A. Yeah, seven.

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Q. How long had she been employed?

A. Employed in palliative care, it was, I would say months, sure, it wasn't long at all. But she is a hospice social worker. She works for Jansen Hospice, which is part of Lawrence Hospital.

MS. NICAJ: I'm going to mark some e-mails, and I would just like to mark them as Plaintiff's Exhibit 26, please. (Whereupon, Plaintiff's Exhibit 26, E-MAILS, was marked for identification.)

Q. I'm going to direct your attention to what's been marked as Plaintiff's Exhibit 26.

A. Okay.

Q. Do you recognize that document?

A. Uh-huh.

Q. Is that a yes?

A. Yes, yes.

Q. Okay.

A. Sorry.

Q. It's okay. What do you recognize it to be?

A. Well, obviously, it's communication from me to Maura, and then Maura back to me, and Maura sending something to Carole and I on Website

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Connection.

Q. Directing your attention to that first page of Exhibit 26.

A. Okay.

Q. Toward the bottom, it appears to be an e-mail from you --

A. This one down here (indicating)?

Q. Yes.

A. Okay.

Q. -- from you to Maura Del Bene. In the middle of the text of the e-mail it says: (Reading) "Once again, thanks for the -- for understanding my bad attitude last week."

A. Uh-huh.

Q. With -- what were you referring to?

A. I don't know.

Q. Okay.

A. I can't tell you right now.

Q. Is there anything that would refresh your recollection?

A. I'm sure if you had something to show me, maybe it would, but I don't know.

Q. I'm going to direct your attention to -- above that, it says -- now it's an e-mail from

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Maura Del Bene to you --

A. Okay.

Q. The last paragraph of the text states: (Reading) "You have good energy and enthusiasm in your work here, don't let one slip-up cloud the picture of your real spirit."

A. Uh-huh.

Q. Do you remember what she is referring to there?

A. I don't, not now. I don't. I'm sure I did at the time.

Q. Okay. The next sentence reads: (Reading) "We all need to help and support each other, and I am glad to be part of the team." Close quotes. Do you know what she was referring to at that time?

A. Probably -- no, I'm not going to speculate. No, I don't know.

Q. At the very top of the e-mail -- of the first page of the document, it's another e-mail from you?

A. Uh-huh.

Q. Dated July 20th, 2006 to Maura Del Bene. It starts: (Reading) "Maura, thanks for

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 2 your -- I think it should've been your e-mail, but
 3 it says you e-mail -- I'm glad you are part of the
 4 team also, dot dot dot. It is often hard work in
 5 this environment when you don't know who you can
 6 trust." Close quotes. What were you referring to?
 7 A. I would be referring to the case
 8 manager.
 9 Q. Okay.
 10 A. In that situation.
 11 Q. Why?
 12 A. Because they're -- well, some of them
 13 are very difficult to work with and they are more
 14 interested in talking about other people's work and
 15 this and that, versus paying attention to their own
 16 situations.
 17 Q. "Other people" meaning social workers
 18 or --
 19 A. Just everybody.
 20 Q. Which of the case managers were you
 21 referring to?
 22 A. It probably would have been Colette
 23 Gilardi or Barbara Moyack.
 24 Q. Was this in response to something
 25 Colette Gilardi did or said?

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1 NICOLE A. SERRA
 2 A. May have been, it's probably possible,
 3 because any issues that I really had working there
 4 were about Colette Gilardi, so -- but I can't say
 5 for sure if that is the case but --
 6 Q. Is she still employed there?
 7 A. Yes, she is.
 8 Q. Do you still have similar issues with
 9 her?
 10 A. No, because she's now recently taking a
 11 new position, still in case management, but not as a
 12 case manager, she's doing something, reviewing
 13 documentation of doctors, so she no longer has --
 14 you know, requests stuff from me to do.
 15 Q. What sort of issues did you have with
 16 Ms. Gilardi?
 17 A. I feel that Ms. Gilardi is a very
 18 anxious person. I feel that she -- I feel that
 19 she's unnecessarily involved in everything in that
 20 department, especially cases that -- especially for
 21 social work. I don't know what her issue is in
 22 social work. I would go to my boss Cathy Magone and
 23 make complaints about her. She made me feel -- I
 24 never encountered anybody that made me feel the way
 25 she made me feel.

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1 NICOLE A. SERRA
 2 Q. Which is in what way?
 3 A. Uncertain, always in question. I felt
 4 like she thought she was my boss and I had to like
 5 report to her. I don't think she understands social
 6 work, nor does she care. I feel that she would just
 7 kind of like give cases over that had difficult
 8 aspect of it. And then when I would be needing her
 9 medical support, because I'm not a doctor, and I'm
 10 not a nurse, and our bosses directed case managers
 11 specifically to assist social workers with the
 12 medical piece, because we don't have that
 13 background, and she would hand over a case to me and
 14 then I would -- basically, go ask other case
 15 managers that I was comfortable with about the
 16 medical status, because she made it that difficult
 17 to work with. And I feel that she turned -- because
 18 of the way that she is, and she always -- she talks
 19 about everybody's business all the time, she makes
 20 situations grander and larger than they would ever,
 21 ever be if it was just you or I dealing with it.
 22 Q. Do you know whether she ever complained
 23 to Cathy Magone about you?
 24 A. Oh, I'm sure she did.
 25 Q. Okay. Do you know whether she ever

Page 37

1 NICOLE A. SERRA
 2 complained to Cathy Magone about Carole Newmark?
 3 A. I'm sure she did.
 4 Q. Why are you sure she did?
 5 A. Because I would have an issue or there
 6 would be an issue with Carole or something. And the
 7 next thing we would know, our boss would be
 8 questioning us about it. So we knew like where it
 9 was coming from, because that is where the problem
 10 stemmed from.
 11 Q. When did you get your CSW? Off the
 12 record.
 13 (Discussion off the record)
 14 A. That would have been, I think it was --
 15 hold on, I believe it was October of '04, yeah,
 16 might have been the 4th or the 6th.
 17 Q. On how many occasions did Ms. Newmark
 18 communicate to you that -- prior to her being
 19 hired -- that one of the reasons she was interested
 20 in working at Lawrence was because of the formation
 21 of palliative care service?
 22 A. I would say, like, maybe two or three
 23 times she had told me about it.
 24 Q. Okay. And she told you that she was
 25 told that she would be involved in the palliative

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1 NICOLE A. SERRA
 2 care service?
 3 A. Uh-huh.
 4 Q. Is that right?
 5 A. Yes, yes.
 6 MS. NICAJ: Okay. I think
 7 I'm pretty much done. I just want to
 8 consult my notes and my client.
 9 THE WITNESS: Okay.
 10 MS. NICAJ: And then,
 11 hopefully, you will be on your way.
 12 THE WITNESS: Okay.
 13 MS. NICAJ: Off the record.
 14 (Discussion off the record)
 15 Q. Apart from Colette Gilardi, did you
 16 have any other issues with other case managers while
 17 you and Ms. Newmark were employed at Lawrence?
 18 A. I'm trying to think. Yeah, I mean, I
 19 didn't cover Five North, but Thelma Gordon and
 20 Barbara Moyack are up there, and they would also be
 21 part of the -- they have been there for a very long
 22 time, so Colette and Barbara were -- I wouldn't call
 23 friends, but they were -- they kind of feed off of
 24 each other. And I know Carole had worked on Five
 25 North and I know that there was probably, you know,

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1 NICOLE A. SERRA
 2 some issues there with Barbara and Thelma.
 3 Q. When you say Colette and Barbara worked
 4 with one another and they feed off one another --
 5 A. Yeah, we wouldn't even want to eat at
 6 the same table with them, because you go down there,
 7 and all they would do was talk negatively about
 8 other people in the department as they're sitting
 9 two feet away from them, talk about patients and
 10 reveal names in public places. And it's not
 11 something that -- Carole and I come from mental
 12 health background, and I know we respect people's
 13 privacy and would not be talking about cases in the
 14 middle of the cafeteria.
 15 Q. Did you ever communicate any concerns
 16 you had with a case manager named Kitty?
 17 A. Did I ever -- yeah, I have.
 18 Q. Okay.
 19 A. I have. I have done it now because now
 20 I'm covering that floor.
 21 Q. What sort of concerns did you have with
 22 Kitty?
 23 A. Kitty is -- I think Kitty is a very
 24 good person. I think she gets very overwhelmed and
 25 she kind of likes to throw the hot potatoes at you.

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1 NICOLE A. SERRA
 2 For example, she called me the other day, said,
 3 "There is a case for you." I said, "Okay." I come
 4 on. I tell her I'm having a meeting with the family
 5 the next day. She calls me during the meeting, "The
 6 family is waiting for you." I said, "I know, I'm
 7 waiting -- I'm meeting with the family right now."
 8 And then they called me ten minutes
 9 after that, as I was still meeting, saying that the
 10 doctor is discharging the patient, where are they
 11 going? It's a long term patient, a patient that's
 12 going to be living in a nursing home that has
 13 dementia, families have to go and look at -- this is
 14 where the breakdown of case management and social
 15 work comes in, because we look at it as a life
 16 transition. You can't just say, "By the way, dad is
 17 demented, he has to go to long-term care." People
 18 get upset. They have feelings behind that.
 19 So, you know, she gets into that a lot,
 20 and then she will tell you, you know, swear up and
 21 down that she would never talk about you to the
 22 boss. She is always like very adamant to tell you
 23 that. I have never said anything to her about, you
 24 know -- it's like she feels like she needs to repeat
 25 these certain reminders about herself. I don't know

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1 NICOLE A. SERRA
 2 if it's like self-reassurance or whatever it is.
 3 But there are issues with her doing stuff like that,
 4 giving a case and then expecting it to be addressed
 5 and taken care of, and always putting her hand back
 6 in the pile all the time constantly and also
 7 confusing cases.
 8 Like, I would go to call to set up
 9 transportation and call Westchester EMS and they
 10 would say, "Thelma Gordon already set up the
 11 ambulance." What? When did that happen? So there
 12 is a lot of miscommunication because of her
 13 impulsiveness.
 14 Q. Were there ever times that there were
 15 multiple calls put in to you from various sources
 16 asking you to consult as a social worker?
 17 A. You mean like from several different
 18 people?
 19 Q. Like at the same time?
 20 A. Yeah, sure.
 21 MR. KEIL: You mean regarding
 22 the same case?
 23 Q. No, regarding different cases.
 24 A. Yeah.
 25 Q. And how do you prioritize?

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NICOLE A. SERRA

A. You kind of -- this is, you know, another thing that was kind of -- our boss kind of leaves us to prioritize what's important; even though she knows what we're prioritizing, case managers don't know. And they feel when they call, what they're telling you is the most important situation, and that can cause problems. Because I look at, if there is a patient that is a psychiatric patient that needs to be -- that came in from a suicide, overdose or attempted, they're in the hospital, we medically stabilized them and they're ready to go, that is my priority for the day.

Because what happens is they have to have a one-to-one sitter with them because they're risk. The hospital is paying for that. So I'm getting calls from administrative: "That patient needs to get out of here. What are you doing? What's happening?" I have to get authorization from the insurance if they have, you know, an insurance company. You have to find a bed. I have to fax all the paperwork. And that is the most important agenda for me on that day. But then I can get a call from the emergency room saying that "We have a rape case down here," and then I have to go, which I

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NICOLE A. SERRA

questions?

MR. KEIL: No.

MS. NICAJ: That is it.

oOo

(Time noted: 10:47 a.m.)

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NICOLE A. SERRA

had experience not that long ago, I had to drop everything that I was doing and I spent five hours down in the emergency room. So people can make an opinion about what I'm doing and where I'm not, but they really don't know where you are. And then, again, my answer is, "I have my phone, you can always call me." You know, it's a lot of --

Q. Are there any guidelines as to what cases you need to prioritize in what order?

A. Well, we're always told the length of stay is very important, so -- and you have to look at the longer someone has been there, the more pressure there is on you to do something, even though most of the times it's out of your hands because, ultimately, the doctor must come in and write a discharge plan or order, and there is nothing that anybody can do until that's done. We call them. We can harass them. We can do all of that, but when they're ready, they will do it.

Q. This is the doctors?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

MS. NICAJ: Do you have any

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STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

I, NICOLE A. SERRA, the witness herein, having read the foregoing testimony on the pages of this deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

oOo

NICOLE A. SERRA

Subscribed and sworn to before me
this _____ day of _____, 2008.

EXHIBIT 27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COPY

-----X
CAROLE NEWMARK,
Plaintiff,

-against-

INDEX NO.

07-CIV-2861(CLB)

LAWRENCE HOSPITAL CENTER AND PAT ORSAIA,
Defendants.
-----X

222 Bloomingdale Road
White Plains, New York
March 18, 2008
11:53 a.m.

EXAMINATION BEFORE TRIAL of ROSEANN O'HARE, a
witness testifying on behalf of the Defendant,
LAWRENCE HOSPITAL CENTER in the above-captioned
matter, held at the above time and place, before a
Notary Public of the State of New York.

Lisa M. Rosso,
Shorthand Reporter

A P P E A R A N C E S:

LOVETT & GOULD, LLP

Attorneys for Plaintiff

222 Bloomingdale Road

White Plains, New York 10605

BY: DRITA NICAJ, ESQ.

COLLAZO, CARLING & MISH, LLP

Attorneys for Defendants

747 Third Avenue

New York, New York 10017

BY: JOHN P. KEIL, ESQ.

ALSO PRESENT:

CAROLE NEWMARK

000

ROSEANN O'HARE,

having been duly sworn by Lisa M. Rosso,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

ooo

EXAMINATION BY MS. NICAJ:

Q. Please state your name and address for
the record.

A. RoseAnn O'Hare, 4401 Victoria Drive,
Mt. Kisco, New York 10549.

Q. Good morning. My name is Drita Nicaj.
I represent the plaintiff in this action, Carole
Newmark. I will be asking you a series of questions
today. I'm looking for truthful and responsive
answers; okay?

A. Okay.

Q. If at any time you want to take a
break, you can do so. But just answer the question
first and then you can take your break; okay?

A. Okay.

Q. Also, all of your responses need to be
verbal. No nods of the head or uh-huhs or ut-uhs;

ROSEANN O'HARE

okay?

A. Okay.

Q. If at any time you don't understand the question, haven't heard the question, or want the question read back, let me know; okay?

A. Yes.

Q. And if there is any testimony that you want to either add or amend or supplement, you let me know; okay?

A. Okay.

Q. Are you currently employed?

A. Yes.

Q. By whom are you employed?

A. Lawrence Hospital.

Q. How long have you been employed at Lawrence?

A. Ten years.

Q. And what is your current position?

A. Vice President, Patient Care Service.

Q. And at the time you first started at Lawrence, what was your position?

A. Same title.

Q. And what are your duties and responsibilities in connection with that?

ROSEANN O'HARE

A. I'm responsible for patient care issues within the hospital. I oversee the nursing department, hospice agency, home care agency, and bereavement center.

Q. Okay. Who's Cathy Magone?

A. Cathy Magone, I think, is Director of Quality Case Management.

Q. Do you supervise Ms. Magone?

A. No.

Q. Do you know who her direct supervisor is?

A. She reports to Dr. Broder.

Q. Do you know an employee by the name of Carole Newmark?

A. Yes.

Q. Okay. How do you know Ms. Newmark?

A. Carole is a social worker at the hospital. So there would be times that Carole would come to me regarding a patient, because I -- my role is also as the administrator on duty. And if there was a patient that needed to be placed in a psychiatric facility, Carole would come and tell me about that patient.

Q. Do you know when Ms. Newmark commenced

ROSEANN O'HARE

employment?

A. No.

Q. Do you know whether she had previously been employed at Lawrence before?

A. I don't know.

Q. Okay. Did there come a time there was a palliative care service or a program that was formed at the hospital?

A. Right. That was my program that we were starting at the hospital.

Q. And that program started when?

A. We officially started in May of 2006 when we hired the nurse practitioner. But we were planning for it probably a year prior to that.

Q. Who's the "we" that were planning, apart from yourself?

A. Myself. We had some fund board members from Jansen Hospice. Dr. Page was part of it. I think, at the time, the previous social worker might have been on that team as well.

Q. And the social worker was who?

A. I'm forgetting her name.

Q. Denise Galloway?

A. Yeah, Denise Galloway. I think she was

ROSEANN O'HARE

part of that group as well.

Q. Was Cathy Magone --

A. No.

Q. Wait -- I didn't finish the question.

A. Sorry.

Q. That's okay. We need a clear record, I'm going to withdraw the question and just ask it again.

Was Cathy Magone active in any way --

A. No.

Q. -- in the formation of the palliative care service?

A. No.

Q. Okay. There was a time that Maura Del Bene was hired?

A. Yes.

Q. And she -- you supervise Ms. Del Bene?

A. Yes.

Q. Did there come a time that you participated in any way in the recommendation of a social worker to be active in the palliative care service?

A. Yes.

Q. Okay. In what way?

1 ROSEANN O'HARE

2 A. When we first started the program in
3 May of 2006, it was Maura Del Bene, Dr. Page and
4 myself who were trying to develop the program. And
5 as we started the program, we were trying to build a
6 team, because there were some patients who had some
7 social work needs. And during our conversations
8 when we were talking about palliative care service,
9 because it was a new service at the hospital, we
10 thought that we needed a social worker to be part of
11 our team as well.

12 Q. Did there come a time there was a
13 decision to appoint a social worker to the
14 palliative care?

15 A. No, I don't think there was a decision.
16 It was -- we had two social workers at the time, and
17 we didn't appoint anyone. It was -- I think Maura
18 probably spoke with Carole about being part of the
19 team. But there was no -- we didn't have a
20 discussion about who would be appointed to it,
21 because the social worker has other duties within
22 the hospital as well, so they wouldn't be appointed
23 solely for that.

24 Q. That is -- withdrawn. I'm not asking
25 solely for the palliative care. Did you ever

ROSEANN O'HARE

participate in any communications concerning appointing one of the two social workers to the palliative care services unit as part of their duties?

A. The only conversation that I had was after Maura had been working with Carole, and she came -- because I met with Maura on a regular basis about the program -- she came to me to say that she didn't feel that Carole was following up with some things that she had given her. And she was going to approach, I think, the other social worker.

Q. Did you ever communicate with Cathy Magone concerning the selection of a social worker to the palliative care service?

A. No.

Q. When did you have this communication with Ms. DeI Bene about her communication with Ms. Newmark?

A. I don't remember when. We started the program in May of 2006, that is when Maura was first hired, and it was probably some time within the -- I'm sure the first six months; I don't know exactly when we talked about that.

Q. Did that -- did there come a time where

ROSEANN O'HARE

you and Ms. Del Bene and some others went to Columbus, Ohio for training?

A. Yes.

Q. Were any social workers also in attendance at that meeting --

A. Yes.

Q. -- or training?

A. Right.

Q. Which one?

A. Nicole Serra.

Q. Do you know how she came to be selected?

A. We had planned going to that program even before Maura was hired, because it was a program to teach us how to grow our program. And I think Nicole was just selected because she had been working with Maura as her social work colleague.

Q. Did you participate in any way in the selection of Nicole Serra to go to that training?

A. No. I mean, it was -- she was working with Maura as part of the team as a social worker. So the decision was made about who we were going to take with us. We took a financial person with us. We took myself. They wanted an administrator to go.

1 ROSEANN O'HARE

2 So I don't remember any -- I just remember that
3 Nicole had been working with Maura at that time.

4 Q. Did you ever communicate with -- with
5 Cathy McDonald concerning the selection of a social
6 worker to the palliative care service, between
7 Carole Newmark and Nicole Serra?

8 A. No. There was no position for it, it
9 was just part of the team. So Maura was just
10 working with the social workers.

11 Q. I understand. In other words, you're
12 distinguishing it from what it is nowadays. There
13 is a social worker that is solely assigned to the
14 palliative care service; is that right?

15 A. Yes, right.

16 Q. And previous to that, while Ms. Newbark
17 was employed at the hospital, there was specific --
18 there was no social worker assigned primarily to the
19 palliative care service?

20 A. Right.

21 Q. Okay. But you've understood that the
22 selection of Nicole Serra to the -- for the training
23 would mean that she would participate in the
24 palliative care service unit; correct?

25 A. Right. Well, there is no unit.

1 ROSEANN O'HARE

2 Q. Or service program.

3 A. Right, right.

4 Q. Okay. And you never had any
5 communications concerning Ms. Serra's selection with
6 Cathy Magone?

7 A. Well, the only conversation after it
8 was presumed that Nicole would go, I did speak to
9 Cathy Magone and told her that we were going to
10 Columbus, Ohio for training for this program. And,
11 you know, that Nicole was part of the team and could
12 she go, because Nicole didn't report to me.

13 Q. Okay. And what, if anything, did Ms.
14 Magone say?

15 A. She said -- I guess she said yes.

16 Q. Okay. Did you ever participate in any
17 way in the selection of Nicole Serra to be part of
18 the palliative care service?

19 A. No. There was discussion between Maura
20 and I about social work needed to be part, because
21 we had patients that required that. But I didn't
22 say to Maura to pick one social worker over the
23 other.

24 Q. Okay. Did you have any opinion as to
25 which -- withdrawn. Did you ever express an

ROSEANN O'HARE

opinion?

A. No.

Q. Did you ever express which social worker should be selected?

A. No.

MS. NICAJ: Okay. I think we're wrapping up. So I'm going to take a quick break, and we can hopefully wrap up pretty quickly; okay?

THE WITNESS: Okay.

(Short break)

Q. In your capacity as a VP of Patient Services, did you ever have occasion to interact with Carole Newmark?

A. Yes.

Q. Okay. What were the circumstances in which you interacted with Ms. Newmark?

A. There were -- mostly there were patients that might have to be placed in a psychiatric facility. And the social worker, Carole, would follow up with those patients and come to me and tell me about the patients. And then I would have to sign an agreement that that patient would be placed based on the attendant's

1 ROSEANN O'HARE

2 recommendation.

3 Q. Did you have any issues concerning her
4 performance or anything like that in your capacity
5 as VP for patient services?

6 A. I don't remember. I mean, the only
7 thing that I remember is about Maura telling me that
8 she had given Carole some things to follow up, I
9 think a policy, and she didn't follow up with that.

10 Q. Okay. But with you directly?

11 A. I don't remember. I mean, it was only
12 one other time that -- I think Carole and Nicole
13 were fairly new at the same time, and -- but I don't
14 remember that I had any conversation about it. I
15 did think that it was a little odd one day when
16 Carole came to me to sign off on one of those, and
17 the other social worker was with her, which I just
18 thought was -- you know, why were two social
19 workers -- seemed to me a little waste of time, two
20 social workers to be doing it for you, one patient.

21 Q. So your perception was the two -- the
22 two of them weren't needed at that time to do this
23 one task?

24 A. Oh, I never seen two do it before or
25 since.

1 ROSEANN O'HARE

2 Q. Did you have an understanding that
3 Nicole Serra was shadowing Ms. Newmark?

4 A. I think she was, because I think she
5 was the newer social worker. Carole had been there.

6 Q. Apart from that example you provided
7 just now, anything else?

8 A. No, I don't remember anything else.

9 Q. Okay. Are there any documents that you
10 can use to refresh your recollection?

11 A. No.

12 MS. NICAJ: That's it.

13 MR. KEIL: Can I just ask one
14 question of the witness?

15 MS. NICAJ: Sure.

16 EXAMINATION BY MR. KEIL:

17 Q. Did you communicate any of the concerns
18 Maura DeI Bene had expressed to you about Carole
19 Newmark to Cathy Magone?

20 A. Yeah, I could have done that. I could
21 have expressed that to Cathy.

22 Q. Do you remember doing so?

23 A. I remember having a conversation with
24 Cathy Magone about -- about the fact that Maura felt
25 that Carole was not following up on some of the work

1 ROSEANN O'HARE

2 that she had given her. And that Maura was probably
3 going to be -- to start working with Nicole.

4 MR. KEIL: Thank you.

5 MS. NICAJ: I have nothing
6 further. Thank you.

7 THE WITNESS: Thank you.

8 ooo

9
10 (Time noted: 12:06 p.m.)
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25

EXHIBIT 28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CAROLE NEWMARK,

Plaintiff,

-against-

INDEX NO.
07-CIV-2861 (CLB)

LAWRENCE HOSPITAL CENTER AND PAT ORSAIA,

Defendants.

-----X

222 Bloomingdale Road
White Plains, New York
March 18, 2008
10:51 a.m.

EXAMINATION BEFORE TRIAL of MAURA DEL BENE, a
witness testifying on behalf of the Defendant,
LAWRENCE HOSPITAL CENTER in the above-captioned
matter, held at the above time and place, before a
Notary Public of the State of New York.

Lisa M. Rosso,
Shorthand Reporter

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Page 4

APPEARANCES:

LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
BY: DRITA NICAJ, ESQ.

COLLAZO, CARLING & MISH, LLP
Attorneys for Defendants
747 Third Avenue
New York, New York 10017
BY: JOHN P. KEIL, ESQ.

ALSO PRESENT:
CAROLE NEWMARK

oOo

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent.

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the Examination Before Trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections for the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

Page 3

Page 5

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS 221.1

221.1 Objections at Depositions:

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c), or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by the CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made.

A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

MAURA DEL BENE,

having been duly sworn by Lisa M. Rosso,
a Notary Public within and for the State
of New York, was examined and testified
as follows:

oOo

EXAMINATION BY MS. NICAJ:

Q. Please state your name and address for the record.

A. Maura Del Bene, 42 Vernon Parkway, Mt. Vernon, New York 10552.

Q. Good morning, Ms. Del Bene. My name is Drita Nicaj. I represent the plaintiff in this action, Carole Newmark. I will be asking you a series of questions today, and I'm looking for truthful and responsive answers; okay?

A. (Nodding head yes)

Q. Is that a yes?

A. Yes, it is. I'm sorry.

Q. All responses need to be verbal.

A. I'm sorry.

Q. It's okay. All responses need to be verbal; that is, the court reporter can't take nods

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1 MAURA DEL BENE
2 of the head or uh-huhs or ut-uhs; okay?
3 A. Yes, thank you.
4 MR. KEIL: We'll do our best
5 to remind you.
6 Q. If at any time you want to add, change,
7 or otherwise supplement a previous response --
8 A. Okay.
9 Q. -- let me know; I will be happy to give
10 you an opportunity to do that.
11 A. Uh-huh.
12 Q. Is that a yes?
13 A. Yes, it is, I'm sorry. I'm not used to
14 talking like this.
15 Q. It's a natural thing, we'll try our
16 best to remind you. If at any time you don't
17 understand a question, haven't heard the question,
18 let me know; okay?
19 A. I will.
20 Q. If you want to take a break, you can do
21 so, but what I would ask you to do first is answer
22 any pending questions that haven't been fully
23 responded to; okay?
24 A. Okay.
25 Q. Is there anything that I said so far

1 MAURA DEL BENE
2 A. Yes.
3 Q. Currently?
4 A. Yes.
5 Q. Who?
6 A. There is a social worker; her name is
7 Mary O'Donnell.
8 Q. Anybody else?
9 A. The medical director, Dr. Page.
10 Q. And Mary O'Donnell has been employed
11 how long?
12 A. Approximately a month.
13 Q. Prior to that, did anyone occupy that
14 position?
15 A. Nicole Serra.
16 Q. Was there anyone by the name of Laura
17 Hanlin?
18 A. Oh, yes, I'm sorry, I totally forgot
19 about her. Yes, Laura Hanlin is a social worker
20 that was hired. She worked with the service, I
21 think for probably two months or so.
22 Q. When did she start her employment?
23 A. I don't have those dates in front of
24 me, I'm sorry.
25 Q. Can you approximate which month?

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1 MAURA DEL BENE
2 that you do not understand?
3 A. No.
4 Q. Okay. You're employed?
5 A. Yes, I am.
6 Q. By whom are you employed?
7 A. Lawrence Hospital Center.
8 Q. In what capacity?
9 A. I'm the nurse practitioner to the
10 palliative care service.
11 Q. When did you commence employment at
12 Lawrence?
13 A. May of '06.
14 Q. And apart from your being the nurse
15 practitioner at the palliative care service, do you
16 have any duties and responsibilities at Lawrence?
17 A. Could you ask that again?
18 Q. Apart from your duties at this service,
19 do you have any other duties?
20 A. No, that is my prime responsibility to
21 the hospital.
22 Q. Is that a full-time position?
23 A. Yes, it is.
24 Q. Are there any other employees that are
25 assigned to palliative care service?

1 MAURA DEL BENE
2 A. I can't.
3 MR. KEIL: Estimate to the
4 best of your recollection, but don't guess.
5 A. I think it was summer of last year,
6 summer of '07.
7 Q. Was this -- was her position, Ms.
8 Hanlin's, full or part-time?
9 A. Part-time, and shared with the hospice.
10 Q. And the hospice name is Jansen?
11 A. Jansen Memorial.
12 Q. What do you mean by shared with the
13 hospice?
14 A. She was a full-time employee of the
15 hospital. Part-time for the service, part-time for
16 the hospice.
17 Q. Okay. And was that the same --
18 withdrawn. Is that the same with Mary O'Donnell?
19 A. No, it is not. She is only part-time
20 for the service and part-time for the hospice.
21 Q. What were the circumstances in which
22 Ms. Hanlin ceased being employed there?
23 A. She decided to stay with -- wanted to
24 devote her time with the hospice side. She wasn't
25 as comfortable in the palliative care hospital bay

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side. It wasn't an arena she had felt she had enough experience in, or comfort level in.

Q. Did she remain at Jansen then?

A. Yes, she is still at Jansen.

Q. You mentioned Nicole Serra.

A. So Nicole is an employee at the hospital.

Q. Right.

A. And she filled in as the palliative care social worker when we started the program, a couple of months into it.

Q. When did she -- withdrawn. Did there come a time she no longer was involved at the palliative care?

A. No. She continues to be involved, but just not formally identified as -- her resources were spread too thin to be the palliative care social worker and a social worker in the hospital. And so she provides backup to the service. Prior to Mary O'Donnell being hired recently, she provided backup and ancillary support, interdisciplinary type of care, but she is not devoted to the service.

Q. Okay. When did that cease?

A. When did that cease?

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O'Donnell.

Q. That was in the summer?

A. Probably in the spring or summer of last year, recently.

Q. When did you commence employment -- withdrawn. You commenced employment in May of 2006?

A. Yes.

Q. And for which position?

A. The nurse practitioner to the palliative care service.

Q. Okay. And it's the position you currently hold today; is that correct?

A. Yes.

Q. Who interviewed you?

A. Dr. Page and RoseAnn O'Hare.

Q. RoseAnn O'Hare's position is what?

A. She's the VP of Patient Services.

Q. At the time you were interviewed, did you have an understanding about what the position was going to be?

A. Yes.

Q. How did you learn that?

A. Through discussions with Ms. O'Hare, as well as Dr. Page, and through the endorsement that

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MR. KEIL: Objection as to the form.

Q. When did she stop being identified as part of the palliative care service? I understand she provided supportive care, as you said --

A. Uh-huh.

Q. -- prior to Ms. O'Donnell being hired?

A. Uh-huh.

Q. But did there come a time that she was no longer identified as part of the palliative care service?

A. No, never really happened formally.

Q. Okay. Did there come a time she or you communicated concerning her no longer being actively involved in the palliative care service?

A. I recall we had conversations about how her resources were spread thin, and it was increasingly more difficult for her to be able to provide the attention and the time to the service that she would like. And that -- and that's when, you know, we sort of evolved into not having her as the primary palliative care social worker and, you know, sought employment through another, you know, part-time employee, Ms. Hanlin, and then Ms.

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took place.

Q. Did there come a time you commenced -- withdrawn. When you commenced employment, was there social workers assigned to the palliative care?

A. No.

Q. Was there a palliative care service actually started at the time you started employment --

A. No.

Q. -- at Lawrence? Was that one of your responsibilities as --

A. Supposed to start up the program.

Q. Was to start it?

A. Yes, or as they called it, roll-out.

Q. Roll-out. And did you have any interactions with Carole Newmark during this time concerning the formation of palliative care?

A. Yes.

Q. At the time, what was Ms. Newmark's position?

A. Social worker.

Q. Do you know whether she was a senior social worker or social worker?

A. By title, I don't know. But I knew

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that she was a senior social worker in her experience.

Q. What was her experience, to your knowledge?

A. I believe that she had worked at Phelps, and I knew that she had worked at Lawrence Hospital once before.

Q. And how did you know that?

A. I think from discussions with her.

Q. Did you have an understanding that she had an interest in participating in the palliative care service?

A. Yes.

Q. And who advised you of that interest?

A. That was -- came up in conversation between Carole and I.

Q. What, in words or substance, did she say to you and what, if anything, did you say to her?

A. Can you repeat that again?

Q. What did she say to you in terms of that interest?

A. I think we had discussions that she had, you know, wanted and had an interest in being

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A. I think we had talked about policy development for bereavement. We had talked about enrollment in social work, networking for palliative care that Beth Israel had. There were other associations and informational websites that I had encouraged her to look at. And a form for -- I don't know if it was with both of them or maybe just Nicole and/or Carole, I'm not sure -- but talking about a social worker evaluation form to formalize the social worker, you know, role on the interdisciplinary team, those kind of things.

Q. Was there any guidelines as to, you know, when things would be -- would have to be formed by? In other words -- I will withdraw the question. Were -- was there any understanding as to when the palliative care service would be up and running?

A. Well, it was up and running. I mean, we had a start-up time of a few weeks to get me acclimated to Lawrence Hospital. But the service started very quickly thereafter with consultations, educational forums for nurses, and quickly in-service the, you know, different departments in the hospital, as well as started patient

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part of the palliative care service. She had been told, I think by the prior social worker, Denise Galloway, that she was, you know, the person to fulfill that role. We had talked extensively about things that she could do to be more involved in the service. It wasn't my responsibility to name the social worker; that was an administrative decision -- but -- between department heads.

But I know we extensively talked about the things that Carole could do to participate and be active in the palliative care service during its early inception and formation. And that was the conversations and through e-mail.

Q. And what, if anything, was done in that connection, to your knowledge?

MR. KEIL: Objection as to the form.

Q. -- for her to actively participate in the palliative care service?

A. Are you asking how she -- what things Carole did to be more active in the palliative care service?

Q. What did you request and what, if anything, did she do?

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consultations. There was a formalization of going to a meeting in the fall, I think it was October.

Q. Where was the meeting held?

A. Columbus, Ohio.

Q. Was there an area of the hospital that was devoted to the palliative care service?

A. No. It was a consultation service, and so you go and do consults wherever they exist in the hospital.

Q. Okay. And how would the palliative care service receive those consults?

A. Through -- any member of the hospital could call -- a social worker, a nurse, a doctor, unit clerk -- anybody could recommend a consultation. And so then you respond to them as the calls come in clearing them with the physician.

Q. Now, would the calls have to go first through you, or it varied?

A. Well, I was the palliative care service designated employee so that was -- I was the prime contact for referrals.

Q. Okay. You indicated that there was a meeting at Columbus --

A. Yes.

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Q. — Ohio. What was the meeting for?

A. It was a training meeting through part of a center to advance palliative care initiative that the hospital had engaged in, I think, a year before I was hired, to help form a palliative care service that was hospital-wide. Integrating both clinical, as well as physical imperatives and administrative imperatives, to make a palliative care program successful within the institution. And it was a three-day training where our team, our designated team of members, clinical and administrative and financial, would go to a similar hospital setting in Columbus and learn more about how they established their service and have an open forum for exchange and discussion and exercises of sorts.

Q. Did they have a -- did the hospital in Columbus, Ohio have a separate palliative care service unit?

A. They had a very developed system. So they had a consultation service and also a dedicated unit and they had three different hospital bases that they worked with. So three community hospitals that they oversaw.

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generally, with Carole.

Q. On how many occasions, if you recall, did you engage in communications with Ms. Magone concerning appointing the social worker to the service?

A. To the best of my recollection, once or twice. Formally discussed, yeah.

Q. By the way, it's whether it's formally or not; it doesn't have to be a formal communication.

A. Once or twice, to the best of my knowledge.

Q. Okay. And with RoseAnn O'Hare?

A. Again, once or twice.

Q. With Ms. Newmark?

A. I think we had multiple discussions about her interest, and the things that she could do to be a part of the palliative care service before the identification of the social worker. So I can't count how many.

Q. Did you ever communicate with Cathy Magone and RoseAnn O'Hare at a meeting with all three of you concerning --

A. No, they were separate.

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Q. Which hospital was this?

A. Oh, I don't remember the name of the hospital, unfortunately.

Q. Okay.

A. It will come to me. I just --

Q. Who went to Columbus, Ohio for this training?

A. RoseAnn O'Hare, Dr. Page, Susan Shepp -- she is our finance person -- myself and Nicole Serra.

Q. Did there come a time that there were any communications concerning the appointment of a social worker for the palliative care service while Ms. Newmark was employed there?

MR. KEIL: Objection as to the form. Can you just read it back?

Q. Withdrawn. Did there come a time that there were any communications by your -- that were held, in your presence, concerning appointing a social worker to the palliative care service?

A. Yes.

Q. Okay. With whom?

A. I had those discussions with Cathy Magone at her request, RoseAnn O'Hare, and I think,

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Q. -- concerning the social worker position?

A. No, ma'am.

Q. Okay. When was the first communication that you had with RoseAnn O'Hare, if you recall concerning appointing a social worker to the palliative care service unit?

A. I think shortly after I was hired, it was discussed that we would be preparing for the meeting in Ohio. And one of the reasons they had delayed the meeting was because they didn't have the nurse practitioner hired, and they wanted to get sort of a start before they went, to have some experiences to share. So I knew, at that point, they were looking to identify a social worker, and then probably closer to September, I guess.

Q. And incidentally, when you went on the trip to Columbus, Ohio, was this training for Lawrence Hospital only, or was it en masse for all hospitals interested in forming such a service?

A. They were -- there was one other hospital there at the time that we were there.

Q. Okay. During your first communications with Ms. O'Hare, did you and she communicate

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1 MAURA DEL BENE

2 concerning your opinion as to who should be
3 appointed to social -- as a social worker to the
4 palliative care unit?

5 A. In my first consultation, no, because I
6 was -- it was shortly after being hired.

7 Q. Okay. And then you indicated that you
8 spoke to Ms. O'Hare another time --

9 A. Uh-huh.

10 Q. -- closer to the trip to Ohio?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. And at which point was -- withdrawn.
15 What did you and she communicate about?

16 A. She asked me what, at this point --
17 based on experience and interactions -- between the
18 two social workers, which person I thought was a
19 better candidate.

20 Q. And what, if anything, did you say?

21 A. I shared with her my experiences in
22 conversations and e-mail with Carole and Nicole, and
23 that I felt that Nicole was a better candidate
24 because of her enthusiasm and response to her
25 interactions.

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1 MAURA DEL BENE

2 Q. What do you mean by incumbent?

3 A. Well, when she was hired, she shared
4 with me that the prior social worker told her she
5 would be the palliative care social worker and
6 heading up the program, or something to that effect,
7 and that is what I mean by incumbent. She was the
8 expected person to be part of this service and to be
9 on the development team.

10 Q. The service hadn't been formed yet;
11 right?

12 A. No. But clearly there were discussions
13 about it that Carole had shared with me.

14 Q. Did Carole Newmark communicate to you
15 any communications she had had with Cathy Magone on
16 the topic of being part of the palliative care
17 service unit?

18 A. I can't remember exactly if there were
19 those conversations.

20 Q. Do you recall the substance of any such
21 communications?

22 A. I think, probably, we discussed in --
23 as we discussed the palliative care program
24 development, and ways in which she could
25 participate. I'm sure it came up in conversation

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1 MAURA DEL BENE

2 Q. Did she say anything -- withdrawn. Did
3 you say anything else to you?

4 MR. KEIL: Objection as to
5 the form.

6 MS. NICAJ: Withdrawn.

7 Q. Did she say anything else to her?

8 A. Related to that issue?

9 Q. Related to that issue.

10 A. Other than it was something that she
11 and Cathy Magone were going to have to confer on,
12 no, nothing specific that I can recall.

13 Q. Did you communicate, prior to this
14 communication with Ms. O'Hare, with Ms. Newmark
15 about your concerns?

16 A. Can you ask that again?

17 Q. Did you communicate with Ms. Newmark,
18 prior to this interaction with Ms. O'Hare, about
19 your concerns as to who would be a better candidate?

20 A. No, I don't think it ever came up in
21 direct discussion with Carole. And I think she had
22 stated that she felt she was the incumbent, as well
23 as her interest, but there was never a direct
24 discussion that I recall between Carole and I
25 regarding that.

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2 how -- that she -- that, I know I had made
3 recommendations to Carole about doing certain things
4 to formalize, you know, social roles within the
5 institution to help lay the groundwork for better
6 evolving and definition of their role -- a social
7 worker's role -- in the palliative care service.
8 But I don't recall her sharing with me or Cathy
9 Magone, I don't remember that part coming up --

10 Q. Did she ever --

11 A. -- any specifics.

12 Q. Did she ever -- did Carole Newmark
13 advise you, in words or substance, that she had
14 spoken to Cathy Magone about the fact that she would
15 eventually be appointed as a social worker to the
16 palliative care unit?

17 A. I don't recall a specific conversation
18 about that.

19 Q. Do you recall the substance of any such
20 communications about that?

21 A. I recall Carole speaking with me, but I
22 don't recall her reporting that she had had a
23 conversation with Cathy Magone about her interest.
24 I just remember her talking directly about --
25 Carole -- about her interest.

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Q. You indicated that there were -- one of the reasons that you were recommending Nicole -- withdrawn. Whose ultimate decision was it to appoint Nicole Serra to the palliative care?

A. Cathy Magone.

Q. Okay. And you indicated that you recommended Ms. Serra because of what?

A. Because of her response to different discussions regarding this service, recommendations for investigating resources, making referrals to the service she had made, and interacted with several of the patients that I had seen for the service, which was not the situation with Carole.

We had very few referrals and shared cases together. Nicole and I had had an experience base of working on patient cases together from the service perspective. And her enthusiasm with the program, and her positivism. This is a new program that needed to be represented well; she was very positive.

Q. And what did you find with respect to Ms. Newmark about the program?

MR. KEIL: Objection to the form.

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A. Probably within a week of each other, the communications.

Q. Okay. What was your first communication with Ms. Magone?

A. To the best of my recollection, she asked me if -- she wanted to identify that she was in the process of making this decision. She wanted some input as to my experience thus far with the social workers. She identified that she had -- she was leaning in a direction because of the distribution of projects and efforts from her departmental perspective. Carole was given a mental health disaster -- I think that's what it was called -- project that she felt was not being attended to. And that adding another piece to that was going to not allow her to fulfill that obligation.

She asked me what my thoughts were. I told her what RoseAnn O'Hare and I had discussed, as my direct supervisor, and my experiences thus far with -- although Carole stated her interest, she did not respond to many of the e-mail requests or project, you know, offerings.

Q. Who did she identify as the person she

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Q. Withdrawn. She wanted also to be involved in the program; is that correct?

A. You're saying "she"; Carole?

Q. Carole Newmark?

A. Yes. She wanted to be involved in the program.

Q. And did you take that as a positive aspect of --

A. Absolutely.

Q. You indicated that you also communicated with Cathy Magone once or twice concerning the appointment of the social worker --

A. Yes.

Q. -- to the palliative care service?

A. Yes.

Q. When was the first occasion?

A. I think it was close to the September --

Q. September -- close to the September --

A. September time frame.

Q. Okay. And when was the second occasion?

A. Probably shortly thereafter.

Q. What do you mean "shortly thereafter"?

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was leaning toward?

A. I think, at that point, I inferred that she was leaning toward Nicole, because of the mental health project that Carole was assigned to and she felt needed to be attended to.

Q. Anything else?

A. Not that I can recall.

Q. Did she advise -- did Miss Magone advise you, in words or substance, what Ms. Newmark's performance was -- what the level of her performance was?

A. May I ask a question? Do you mean generally what her performance was?

Q. Generally?

A. No, I think she only spoke in relation to her obligation to the mental health disaster plan and lack thereof. And she felt that would be -- that was the only inference that she wasn't participating and following up on that assigned project. And therefore, it would be best for her not to have a second project possibly. In addition, to her feeling that Nicole was a better candidate because of some of the input that I had offered through RoseAnn.

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Q. When was your second communication -- withdrawn. Was there anything else said by you or her during this first communication with her?

A. No, not that I can recall.

Q. When was the second communication?

A. Probably within a couple days or a week.

Q. Where were you and where was she?

A. To the best of my recollection, we were on the sixth floor in her office, her old office.

Q. Was this a prearranged meeting?

A. No, spontaneous, actually.

Q. What, in words or substance, did she say?

A. Excuse me?

Q. What, in words or substance, did she say?

A. What, in words of substance, I'm sorry?

Q. -- words or substance did she say?

A. In asking me for the meeting or --

Q. No.

A. -- just in general?

Q. At the meeting.

A. She said that she was -- under -- she

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verbatim what she said.

Q. What, in words or substance, did she say?

A. I just shared that with you.

Q. What did you say?

A. What did I say?

Q. Yes.

A. I said that ultimately it was an unfortunate situation. I said it was a decision that she and RoseAnn were in the position to make. I contributed my input in terms of what I felt thus far, different attributes that would be of benefit to the service. I offered the different attributes that I felt would be of benefit to the service.

Would you like me to share those?

Q. Of course.

A. I felt that Nicole was more engaging, enthusiastic and positive, in both her patient care referrals, her verbal communications and e-mail communications. Whereas Carole was generally negative, less responsive and not interactive regarding patient care activities.

Q. Anything else?

A. No, I don't think so.

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was in the process of considering which social worker would be appropriate to assign to the palliative care service. She shared that she was leaning toward Nicole because of the mental health disaster project outstanding for Carole. She too agreed that Nicole was more positive in her efforts. Carole did not show enthusiasm in participation from a disciplinary perspective thus far in the service. And that her general -- that, generally, it may not be in the best interest of the service to not have a positive participating individual.

Q. This is what she said?

A. That was the essence of our discussion.

Q. What did she say? I'm concerned at this junction what she said, not what the essence of it -- of both of your collective statements, because I'm going to get to what you said during these meetings. I'm interested in what she said.

A. Well, it was an exchange of conversations in which she shared with me the mental health disaster project. She shared with me that she was leaning toward Nicole. She agreed with some points that I had made through RoseAnn O'Hare about positivism participation, but I don't recall

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Q. Did you ever share what you observed about Ms. Newmark with Ms. Newmark?

A. Directly, no. I don't think she ever asked me, nor did I offer that.

Q. Okay. Did there come a time you learned that Ms. Newmark had expressed concern that Ms. Magone made age-related comments in connection with Nicole Serra's appointment to the palliative care service?

A. I don't know if it was in relation to the palliative care service. I know there was a concern about a general ageism statement from Carole.

Q. How did you learn of that?

A. I think it was either through -- through Carole or Nicole. I think Cathy had said something to the relation of she is younger, but I don't -- I mean that was the best that I can recall.

Q. Did you ever recall communicating with Ms. Magone about any meetings she had with either Carole Newmark or Human Resources in which Ms. Newmark made a complaint about her?

A. I knew that -- yes, I knew that Carole had made a complaint. I think that was from Carole,

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maybe one day in rounds or something in the ICU, I think Carole made a mention that she was making a complaint.

Q. What, if anything, did you ever communicate with Ms. Magone about the fact that Ms. Newmark had complained about her?

A. I don't think I ever communicated with Ms. Magone about that directly, no.

Q. Did you ever communicate with her indirectly about it?

A. I think we're all aware that -- of what's going on now. So there is a general, you know, understanding of that. And -- but in terms of specific conversations at the time, I can't recall what communications Cathy Magone --

Q. Now, you indicated that Ms. Newmark was generally negative. What do you mean by that?

A. She wasn't happy in her position. She made that very clear verbally and non-verbally.

Q. What did she say?

A. I can't remember her exact words, but she was very verbal in her discontent with case management leadership, the department structure, utilization of social work or lack thereof,

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A. Yes.

Q. Now, so she participated in palliative care service?

A. No, the interdisciplinary rounds are a hospital-wide experience that happens on each unit where different people come; social work, physical therapy, nursing. These are rounds that happen in the ICU and in the different nursing units.

Q. So when she expressed her concern about the case management model, what did she say with respect to the issue?

A. She would be very verbal about her discontent with Cathy Magone's leadership, with the infrastructure case management, with the role or lack thereof definition of social work within the case management system. That there was not an understanding of how social workers performed their duties, and that there was a level of -- I don't want to say disorganization -- but a level of discontent with -- with she and Nicole's role within case management.

Q. Did Nicole Serra ever express those same concerns to you?

A. I think Nicole had concerns about the

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appropriate utilization of social work. And just her double of expressed -- I mean, she was very free in her frustration with all of those things.

Q. So she expressed her concerns about these areas to you?

A. Directly to me and generally in public, in rounds, and different things.

Q. You were present when she generally expressed her communications -- her concerns about this?

A. Yeah, there are times when she would, you know, breathe heavily and sigh, make gestures, you know, she was very emphatic in her gum-chewing when she was upset, things like that.

Q. She was emphatic in her gum-chewing?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Where would she be emphatic with her gum-chewing?

A. In rounds, interdisciplinary rounds.

Q. And you were present when she was emphatic in her gum-chewing in interdisciplinary rounds?

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social work.

Q. Did she express those concerns to you; yes or no?

A. She expressed similar concerns, yes.

Q. Okay. Did you ever express any concerns to Ms. Newmark about what you observed in Cathy Magone's interaction with other employees?

A. I can't think of specifics. I know we discussed Cathy Magone's leadership style.

Q. Did you ever express any concerns about Cathy Magone's leadership style to Ms. Newmark?

A. I'm sure we discussed the fact that it was less than optimal at times.

Q. Did you express those concerns, not "we." Did you ever express concerns about Ms. Magone's leadership style?

A. I think I may have, yes. I probably did in the context of our discussion, yes.

Q. And what were those concerns, specifically?

A. I don't remember specific concerns, other than there were strategies and things that Nicole and Carole could do to improve their position within the case management department, given Cathy's

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lack of understanding of social work role, and how they could advocate for themselves in more of a formal way. And I remember having that discussion with Carole in the Chinese Restaurant. One day we had lunch together and talked about that. So I know we did -- we talked about the leadership challenges. And I did speak specifically to Annette and encouraged her to do certain things to maybe pave the way for the social workers, which would then pave the better way for their involvement in the palliative care service.

Q. Did you ever express any concerns to Ms. Newmark, based on any observations that you had, with Ms. Magone's interaction with other employees?

A. Not that I can -- I think you're asking me for specific circumstance.

Q. I'm asking, did you ever express any concern, based on your personal observations, of Ms. Magone's interaction with other employees?

A. I don't think I ever experienced Ms. Magone personally with other employees. I think I could comment on things that were described to me and my own experience with Ms. Magone, but I don't think I've ever seen her interact with other

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Q. I'm going to direct your attention to what's been previously marked as Plaintiff's Exhibit 26 for identification. Do you recognize that document?

A. Yes, I do.

Q. What do you recognize it to be?

A. An e-mail that I had sent out regarding mental health services in -- I don't know if it was just the county or in the area, might have been nationwide, a link that I had sent to Carole and Nicole.

Q. And specifically, I'm going to direct your attention to the first page of that document toward the bottom there?

MR. KEIL: Under 11:55 a.m.?

MS. NICAJ: That's correct.

Q. I am going to direct your attention to -- it's Wednesday, July 19.

A. Uh-huh.

Q. It appears to be an e-mail from Nicole Serra to you?

A. Uh-huh.

Q. In the middle of the text of that e-mail reads, quote, "Once again, thanks for

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employees.

Q. What was your own experience with Ms. Magone?

A. Mine were positive. I personally didn't have challenges with her leadership. She wasn't my supervisor. I didn't report to her in that way. It wasn't that kind of a relationship.

Q. Apart from Ms. Newmark, did anyone ever express their concerns about Ms. Magone to you?

A. I think Nicole did.

Q. She did. And what, in words or substance, did Nicole say to you about Ms. Magone?

A. I think generically her lack of understanding about the social work role and utilization of such within the case management department.

Q. Okay. And those were similar concerns that Ms. Newmark expressed?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sorry.

Q. That's okay. It's okay, everyone does it.

A. I'm a nodder.

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understanding my bad attitude last week." Close quotes. Do you see that?

A. Yes, I do.

Q. Do you recall what that was in reference to?

A. No, I don't.

Q. Okay. Do you know whether you ever documented Ms. Serra's bad attitude?

A. It wasn't my position to do so.

Q. Do you know what the circumstances were for the bad attitude?

A. No.

Q. Do you know whether you were present when she exhibited bad attitude?

A. From reading the e-mail, I must've been. But I don't recall it.

Q. Okay. I'm going to direct your attention further up. It appears to be an e-mail from you to Ms. Serra. Do you see that?

A. Yes.

Q. It reads, quote, "You have good energy and enthusiasm in your work here -- dash -- don't let one slip-up cloud the picture of your real spirit." Do you see that?

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A. Yes, I do.

Q. What were you referring to?

A. I don't remember exactly. It was obviously something related to the bad attitude reference that she made below.

Q. Okay. Did there come a time that Ms. Newmark communicated to you the decision that had been made concerning Ms. Serra's appointment?

A. I don't ever recall ever discussing it directly with Carole actually.

Q. Okay. Did she ever advise you, in words or substance, that she had no hard feelings about the issue of Ms. Serra's appointment to you?

A. I don't remember a direct conversation. But I do not remember any hard feelings after the naming of Nicole.

Q. Do you call your relationship with her; was it cordial before the naming of Nicole Serra to the palliative --

A. Cordial throughout her employment, yes.

Q. And even after?

A. Yes.

Q. Okay. Directing your attention to the very first e-mail of that, of Exhibit 26?

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amidst the distress that she expressed.

Q. What distress are you referring to?

A. "It's often hard to work in this environment when you don't know who you can trust." I mean, that's a distressing statement to say.

Q. And it's positive, in your view?

A. But I think she was positive in that, you know, "I'm glad you're part of the team, let me know what I can do for you on the cases." You know, I consider that supportive and also personal and professionally. I mean, she was always very positive in her turn-around of a situation, trying to improve -- Yes, there are challenges, but let's keep moving forward, how can we continue to work together and do different things.

Q. You weren't part of the case management team; were you?

A. No.

Q. So when you understood she was expressing her concern about the case management team --

A. Uh-huh.

Q. -- and you later used the supportive -- she was talking about you in supportive terms; isn't

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A. Here?

Q. No, top page, first page?

MR. KEIL: July 28th, 1:38 p.m.?

MS. NICAJ: That's correct.

Q. Do you know what this e-mail refers to? In -- part of the e-mail reads, quote, "It is often hard to work in this environment when you don't know who you can trust." Close quote.

A. Can you ask your question again?

Q. Do you know what this was referring to? This is an e-mail Nicole Serra sent to you, quote, "It is often hard to work in this environment when you don't know who you can trust." Close quotes.

A. I think she was referring to within the case management department.

Q. What about within the case management department?

A. I think the interactions and exchanges that occur amongst the nurse case managers and social workers and department in general.

Q. Did you consider this a negative attitude on her part?

A. No. I found it to be very positive,

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that right?

A. Yes.

Q. She wasn't referring to the case management team in supportive terms; was she?

A. No. I think she was referring to my presence --

Q. Okay.

A. -- in the hospital and interfacing with her.

Q. Okay. On how many occasions did Nicole Serra express her concern to you about the case management team?

A. I can't quantify that. I would say on several occasions.

Q. Okay. And on how many occasions did Ms. Newmark express her concern to you about the case management team?

A. On many occasions, several occasions.

Q. Many or several?

A. Several.

Q. Okay. Do you recall each instance in which Ms. Serra expressed her concern about the case management team?

A. Not each instance.

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Q. And what about Ms. Newmark?

A. Not each instance.

Q. Okay. Did Ms. Newmark, as a social worker, ever interact with you in connection with your responsibilities at the palliative care service? In other words, did she ever have any interaction with patients that -- that you would have been responsible for?

A. Very infrequently. I recall one patient that we crossed over on.

Q. Do you recall what the circumstances were?

A. It was a situation, I think, in which the patient or family were considering hospice or placement in a hospice-like facility for the individual. It was late in the afternoon, early end-of-day time, Carole had already met with the family, identified their interest in that piece, and passed over the case to me, which I accepted.

Q. Were you satisfied with her work on that particular project?

A. I think I would have been more satisfied had she shown participation in the palliative care piece within the discussion with the

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A. I don't supervise Carole, so I wouldn't know.

Q. You don't know what she had to do following the meeting in connection with her responsibilities as a social worker?

A. She did not share that with me.

Q. Okay. And did she ever tell you that she had to see another patient?

A. No, she did not.

Q. Okay. Going back to the selection of Nicole Serra, whose decision was it ultimately?

A. Cathy Magone's.

Q. Okay. Whose decision was it for Cathy Magone to no longer be an active participant in the palliative care service?

MR. KEIL: Objection to the form. Cathy Magone?

Q. I mean -- Cathy Magone, sorry -- Nicole Serra. Whose decision was it to -- for Nicole Serra to no longer be involved actively in the palliative care service?

A. I think it was a general decision that was made primarily by Nicole and myself because of the expectations from the hospital system. After

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family and done a joint family meeting; that's what I had expected, but that didn't occur.

Q. Did she tell you why?

A. No, she did not.

Q. Did you ask her to participate in the joint meeting with the family?

A. No, I did not specifically ask, though it was a natural evolution from which occurs -- well, had occurred in past. So I sort of expected when she said, I have this family, they would like to talk about hospice, and end of life issues, and she expressed her interest in palliative care, it would've been a natural fit to have a sit-down together with the family since she had started the conversation with them. And then I was coming in formally for the palliative care service, for us to sit down and do that together, it would be a good chance for us to work together and see our fit.

Q. Did you invite her to do so?

A. I don't recall inviting her to do so, no. I clearly read that she was handing the case over to me and she was leaving.

Q. Do you know whether that -- that patient was the only patient that she had that day?

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Carole's leaving it left her only as the social worker and really just spread her too thin in terms of her ability to attend to the needs of the hospital, as well as the service. And Nicole didn't want to do something if she wasn't able to do it well. So we reverted to, you know, soft presence and backup system, it was joint.

Q. You indicated that there was an issue about -- withdrawn. Cathy Magone mentioned to you about a mental health disaster in which Ms. Newmark was in charge of?

A. Was assigned, yes.

Q. Was assigned. Do you know anything about that project?

A. Just generically from overhearing it from, I think, Nicole and Carole, as well as from Cathy, just generically saying she was assigned to this project.

Q. Do you know whether that project was ever completed?

A. To my understanding, it was not.

Q. Do you know how long the project had to be completed by; was there a deadline?

A. I think there was a time frame, but I'm

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2 not privy to what the time frames were.

3 Q. Do you know whether it was completed on
4 or after Ms. Newmark left?

5 A. I don't know if it ever has been
6 completed. I'm not privy to that information.

7 Q. Apart from your interactions with Ms.
8 Newmark on that one occasion with the patient --

9 A. Uh-huh, yes.

10 Q. -- did you have any other interactions
11 with her in her capacity as a social worker in the
12 palliative care service?

13 A. Could you rephrase the question?

14 Q. Sure. You indicated that you just
15 recall one interaction with Ms. Newmark relating to
16 the patient --

17 A. Uh-huh.

18 Q. -- and palliative care; is that
19 correct?

20 A. Yes.

21 Q. Do you recall any other instances in
22 which you interacted with Ms. Newmark on a patient
23 involving palliative care?

24 A. No, I do not.

25 Q. Okay. I think I'm winding down. I

2 STATE OF NEW YORK)
3) SS:
4 COUNTY OF NEW YORK)
5
6

7 I, MAURA DEL BENE, the witness herein,
8 having read the foregoing testimony on the pages of
9 this deposition, do hereby certify it to be a true
10 and correct transcript, subject to the corrections,
11 if any, shown on the attached page.
12
13

14 oOo

15
16
17 MAURA DEL BENE

18
19
20 Subscribed and sworn to before me
21 this ____ day of _____, 2008.
22
23
24
25

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2 just want to consult with my notes and my client
3 and, hopefully, you can go; okay?

4 A. Shall I step out?

5 MS. NICAJ: No, I'm going to
6 step out.

7 (Short Break)

8 Q. Do you know whether Carole Newmark ever
9 referred patients to the palliative care by calling
10 Jansen?

11 A. I wouldn't know that.

12 MS. NICAJ: Okay. I have no
13 further questions.

14 Q. Are there any changes or things that
15 you want to supplement to your testimony here today?

16 A. No, ma'am.

17 MS. NICAJ: That's it.

18 THE WITNESS: Thank you.

19 MS. NICAJ: Sure.

20 oOo

21
22 (Time noted: 11:50 am.)
23
24
25

2 STATE OF NEW YORK)
3) SS
4 COUNTY OF ULSTER)
5

6 I, Lisa M. Rosso, Notary Public within and
7 for the State of New York, do hereby certify:

8
9 That I reported the proceedings in the within
10 entitled matter, and that the within transcript is a
11 true record of said proceedings.
12

13 I further certify that I am not related to
14 any of the parties to the action by blood or
15 marriage, and that I am in no way interested in the
16 outcome of this matter.
17

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 23rd day of April, 2008.
20

21
22
23 LISA M. ROSSO,
24 NOTARY PUBLIC
25